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ABSTRACT

This congressional report on Senate Bill 538 contains the testimony that was given at joint hearings to debate the passage of the Economic Dislocation and Worker Adjustment Assistance Act. This act, which is based primarily on the recommendations of U.S. Secretary of Labor Brock's blue ribbon task force: (1) creates displaced worker units at the federal and state levels to coordinate reemployment assistance and establish strike forces to move in and furnish rapid response to specific plant problems; (2) requires employers to give workers and local units of government notice of plant closings; and (3) calls upon employers who plan to close plants to consult with local community leaders and employee representatives about the possibility of keeping the plants open. The following agencies and organizations were among those represented at the hearings: the American Bakers Association, American Trucking Associations, Associated Builders and Contractors, United Auto Workers International Union, Communications Workers of America, U.S. Conference of Mayors, Association of American Railroads, American Federation of Labor-Congress of Industrial Organizations, General Electric Company, U.S. Chamber of Commerce, Whirlpool Corporation, National Center on Occupational Readjustment, Food Marketing Institute, New England Equity Institute, Office of Strategic Planning and Policy Development, National Alliance of Business, and the Baltimore Metropolitan Manpower Consortium. Three articles on the problems faced by dislocated workers and a minority staff analysis of the act are also included. (MN)

S. HRG. 100-186

ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

ED288039

JOINT HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

AND THE

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY

OF THE

COMMITTEE ON LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 538

TO IMPLEMENT THE RECOMMENDATIONS OF THE SECRETARY OF LABOR'S TASK FORCE ON ECONOMIC ADJUSTMENT AND WORKER DISLOCATION, AND FOR OTHER PURPOSES.

MARCH 10, AND 26, 1987

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ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

TUESDAY, MARCH 10, 1987

U.S. Senate,
Subcommittee on Labor and
Subcommittee on Employment and Productivity,
of the Committee on Labor and Human Resources,
Washington, DC.

The Joint Hearing convened, pursuant to notice, at 10:05 a.m., in room SD-430, Dirksen Senate Office Building, Senator Howard M. Metzenbaum (Chairman of the Subcommittee on Labor), and Senator Paul Simon (Chairman of the Subcommittee on Employment and Productivity) presiding.

Present: Senators Metzenbaum, Simon, Quayle, Hatch, Humphrey, Harkin, and Adams.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator Metzenbaum. Good morning.

Today we are holding the first of two joint hearings of the Subcommittee on Labor and the Subcommittee on Employment and Productivity to discuss Senate Bill 538, the Economic Dislocation and Worker Adjustment Assistance Act. Passage of this legislation is critical if this nation is to remain competitive in the world economy.

Since 1981, over 11 million productive Americans have lost their jobs because their plants have shut down or their positions were eliminated.

While the dislocated workers of the 1980s come largely from the manufacturing sector, it should be noted and emphasized that millions have lost jobs in the service sector as well.

But regardless of the type of work, when these men and women lose their jobs, the loss is especially severe. One-third of those displaced since 1981 have failed to find new employment. Often, they lack the skills or education to fill new or emerging jobs in America's rapidly changing economy. Those who are employed typically receive lower earnings and often lack the health insurance and other benefits they had in their former jobs.

Some will argue that the problem of dislocation affects primarily the Frost Belt States. But make no mistake, as we will hear today, this is a national problem. From shoe factories in Maine to textile mills in the Carolinas; from auto and steel plants in Ohio to high-tech establishments in California, American workers face the prospect of finding new jobs and new careers.

The charts behind me illustrate the national scope of this problem. The first chart shows the rate of dislocation due to plant closings is highest not in the Rust Belt area, but highest in the South and the Southwest and Mountain States—this entire area here, the bright red areas on the map.

The second chart, on my right, demonstrates that the total dislocation rate is highest in the South Central Region—Arkansas, Louisiana, Oklahoma, and Texas—the bright blue area on that map. Both charts show that the lowest dislocation rates are in New England and the Middle Atlantic Regions—all States in the Frost Belt.

The point is, this is not an issue that belongs just to the Frost Belt. This is not an issue that just has to do with the areas that are known as the Rust Belt areas of the country. This is a problem that affects the entire nation.

Whether these American workers are victims of employer flight to foreign countries, pawns in the financial maneuvering of greedy Wall Street takeover tycoons, or casualties of our growing inability to compete in the global economy, we must help them secure retraining and job placement assistance. That is what S. 538 is all about.

The bill contains $980 million, a wise investment in human capital, and it should be noted, the very amount that the Administration has used and has suggested for dealing with this same problem.

We believe that our bill will hasten the return of productive workers to our economy. The bill has three basic components.

First, following the recommendations of Secretary Brock's blue ribbon task force, the bill creates displaced worker units at the Federal and State levels to coordinate reemployment assistance and establish strike forces to move in and to furnish rapid response to specific plant problems.

Second, again responding to the blue ribbon task force, we require employers to give workers and local units of government advance notice of plant closings. Such notice is recognized by experts as an essential component of any successful worker adjustment program.

The bill also calls upon employers who plan to close their plants to consult with local community leaders and employee representatives about the possibility of keeping these plants open.

The Chairman would be less than candid if he did not say that that portion of the bill is the portion which appears to be most controversial. But I have difficulty in understanding what is so horrendous, what is so evil, what is so cataclysmic about giving notice and consulting with employees as well as the community. And if in some way we have drafted the language that makes it offensive, we are prepared to work with management, with employers, we are prepared to work with the Administration in order to see to it that this is an acceptable provision.

We are not looking for confrontation; we are looking for cooperation to take care of displaced workers in this country, those who have lost their jobs through no fault of their own.

And third, the bill directs the Secretary of Labor to establish three demonstration projects that hold great promise in assisting dislocated workers—a worker training loan project; a project to encourage workers to start their own businesses, and a public works employment project.

This morning we will hear from public officials, labor leaders and the business community. I am pleased that the insights of such a diverse group are being offered to the community. Over the coming weeks, I look forward to bipartisan discussions designed to address specific concerns with the legislation.

But let me be clear—this bill will move, and it will move quickly. We will have another joint subcommittee hearing on March 26. Senator Simon chairs that Subcommittee and will be with us shortly.

At the Full Committee level, Senator Kennedy wants this bill reported to the Floor by early May, and we fully intend to meet that deadline.

The Economic Dislocation and Worker Adjustment Assistance Act is comprehensive legislation that is in the forefront of the current debate on competitiveness.

I look forward to hearing the testimony today and encourage you to work with us in the coming days so that we can help put America back to work.

At this point we will enter an opening statement by Senator Simon into the record.

[The opening statement of Senator Simon follows:]

OPENING STATEMENT OF SENATOR PAUL SIMON (D,IL)
AT THE JOINT HEARINGS OF THE
SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY
AND THE
SUBCOMMITTEE ON LABOR

March 10, 1987

GOOD MORNING. I AM PLEASED TO JOIN MY DISTINGUISHED COLLEAGUE FROM OHIO IN CONDUCTING THESE JOINT HEARINGS ON S. 538, THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ACT OF 1987. THIS BILL, AND SIMILAR LEGISLATION RECOMMENDED BY THE ADMINISTRATION, PROPOSES SIGNIFICANT MODIFICATIONS IN OUR MAJOR JOB TRAINING PROGRAMS FOR DISLOCATED WORKERS. I STRONGLY SUPPORT THESE BI-PARTISAN EFFORTS TO IMPROVE THE PLIGHT OF SO MANY PEOPLE WHO, FOR MANY YEARS, HAVE EPITOMIZED THE AMERICAN WORK ETHIC, AND NOW FIND THEMSELVES OUT OF WORK AND UNABLE TO FIND NEW EMPLOYMENT THAT WILL REWARD THEM ON PAY DAY IN THE SAME WAY.

SENATOR METZENBAUM IS RIGHT. THIS IS NOT A REGIONAL PROBLEM PLAGUING THE FROST BELT AND THE RUST BELT AREAS IN THE NORTHEAST CORRIDOR AND THE GREAT MIDWEST. THE PROBLEM OF REBUILDING OUR HUMAN AND INDUSTRIAL INFRASTRUCTURE WILL NOT BE SOLVED WITH WORDS LIKE "PRODUCTIVITY" AND "COMPETITIVENESS." IT CAN BE SOLVED IF WE MAKE "PUTTING AMERICA BACK TO WORK" OUR NATION'S NUMBER 1 PRIORITY!

UNEMPLOYMENT IN THE UNITED STATES HELD STEADY IN FEBRUARY, FOR THE THIRD CONSECUTIVE MONTH, AT 6.7 PER CENT ACCORDING TO THE BUREAU OF LABOR STATISTICS. WHILE SOME APPLAUD THIS PLATEAUING OF THE UNEMPLOYMENT RATE, I THINK OF THE HUMAN MISERY THAT FACES THE 10 MILLION AMERICANS WHO WANT TO WORK AND CANNOT. I THINK OF THE 11 MILLION WORKERS WHO LOST THEIR JOBS BETWEEN 1981 AND 1985, MORE THAN TWO MILLION EACH YEAR. I ALSO THINK OF THE FINANCIAL HARDSHIP THAT UNEMPLOYMENT BRINGS -- BLUE COLLAR WORKERS TYPICALLY EARN 16 PERCENT LESS IN THEIR NEW JOBS. ALMOST ONE-THIRD TOOK PAY CUTS OF MORE THAN 25 PERCENT. WHILE WAGES AREN'T EVERYTHING, OUR SOCIETY TENDS TO JUDGE A PERSON BY HOW MUCH HE OR SHE MAKES, HOW EXPENSIVE A CAR YOU DRIVE AND BY THE NEIGHBORHOOD YOUR HOME IS LOCATED IN. ELIMINATING A PERSON'S ABILITY TO PROVIDE FOR THEIR FAMILY AND EDUCATE THEIR CHILDREN IS THE SHORT ROAD TO SHAME -- LOST WAGES LEAD TO LOST SELF-RESPECT AND ULTIMATELY TO LOST HOPE.

THE BILL BEFORE US TODAY ADDRESSES A PART OF THE PROBLEM. SENATOR KENNEDY'S JOBS FOR EMPLOYABLE DEPENDENT INDIVIDUALS OR JEDI (S. 514) EMBRACES ANOTHER SOLUTION. THERE IS ONE ADDITIONAL STEP THAT WE MUST TAKE AS A NATION. THAT STEP IS TO GUARANTEE A JOB TO EVERY INDIVIDUAL WHO WANTS TO WORK. I HOPE THAT WE WILL TAKE THAT STEP.

I LOOK FORWARD TO HEARING TODAY'S WITNESSES. ON MARCH 26th, WE WILL HEAR ADDITIONAL WITNESSES. MANY OF THEM HAVE NOT YET HAD THE OPPORTUNITY TO BE HEARD. THEY ARE THE LOCAL GOVERNMENT OFFICIALS, THE PRIVATE INDUSTRY COUNCIL MEMBERS AND THE COMMUNITY-BASED ORGANIZATIONS WHO MAKE THE TITLE III, JTPA PROGRAM WORK. I INTEND TO ENSURE THAT THIS PROGRAM, WITH SOME OF THE THE MODIFICATIONS RECOMMENDED BY THE ADMINISTRATION AND THOSE REFLECTED IN S. 538, CONTINUES. WE WILL AMEND THE JOB TRAINING AND PARTNERSHIP ACT TO SEE THAT THAT HAPPENS.

MAJOR REVISIONS S. 538 IN COMBINATION WITH DOL's WORKER READJUSTMENT ASSISTANCE ACT of 1987

S. 538 will be re-drafted as amendments to Title III of The Job Training and Partnership Act and will include a plant notification provision only.

- PICs will be retained as the local delivery mechanism for all non-plant focused service delivery. The new "in-plant" sevice delivery mechanism will be the state Title III office and the Worker Adjustment Committees, voluntarily established and made up of union/worker representatives, management and an unbiased third party. If a WAC is not voluntarily established, then the state office will provide "in-plant" services directly.

- The composition of the PIC will be modified: (1) 50% of its membership will be from the business sector; (2) 25 % will be unions or representatives of workers; and (3) 25% will be representatives of local governments, postsecondary, elementary and secondary education agencies or institutions or non-profit commmunity-based organizations involved in the delivery of services.

- There will be a 15% limit on the dollar amount that an SDSA may use in providing benefits (not supportive services), a 45 day limit on the number of days that the SDA may continue to provide supportive services after the dislocated worker leaves the program, and an absolute limitation on providing supoortive services or benefits to persons engaged in education, training or re-training.

- The Federal Worker Readjustment Advisory Council will be included (as proposed by the Adminsitration and contained in the House bill) -- however the Council will have an unaffiliated Chair and two Vice-Chairs, one each representing labor and management.

The Worker Loan Program would be substantially revised and would feature private loan capital provided through the Supplemental Loan Program under Title IV of the Higher Education Act, with a federal guarantee. The capital would be made available through designated national lenders, e.g. United Student Aid Funds, CITIBANK, Continental Illinois Bank, BANKAMERICA, in the GSL program, with a national guarantor (HEAF), and secondary market services provided through the Student Loan Marketing Association (SALLIE MAE). All dislocated workers would be automatically eligible, regardless of current or past year income, with vouchers being provided to accredited postsecondary institutions, which have been certified by the Secretary of Labor, in consultation with the Secretary of Education, as providing quality, relevant training for jobs in the appropriate geographic area.

Senator **Metzenbaum**. I am very pleased that Senator Quayle, the Subcommittee's Ranking Minority Member as well as Senator Hatch, the Full Committee's Ranking Minority Member, are with us.

Senator Quayle, do you have an opening statement?

OPENING STATEMENT OF SENATOR QUAYLE

Senator **Quayle**. Thank you, Mr. Chairman.

I am pleased to be here today to discuss S. 538, the Economic Dislocation and Worker Notification Adjustment Assistance Act of 1987.

This bill contains an important title that would help dislocated workers adjust to abrupt changes in the labor market by training them for new jobs and providing them with job search assistance and remedial education.

This focus of dislocated worker adjustment grew out of the current Title III of the Job Training Partnership Act, which I authored with Senator Kennedy in 1982. I was glad to learn of the recent report of the General Accounting Office that revealed that Title III has a high success rate, particularly compared to its predecessor, the Comprehensive Employment and Training Act, known as CETA. That success rate was 69 percent, which is a rather outstanding figure of job placement.

It is clear that we are learning things about dealing with the problems that dislocated workers face and moving these individuals back into the labor market. That ought to be our objective on how we can, in fact, get these people from unemployed into employment. Title III has a very good success record. I think that what we are looking at Title I of this bill and the Administration's request is an acceleration of that process—something I strongly support.

Worker adjustment is something that we can all agree on and on which we can work together. Worker adjustment programs need the cooperation of labor and management, and that is exactly what we need in dealing with this problem.

I have no doubt that Title I of this bill could and I think should, move very quickly. It is an issue that there is probably not a lot of disagreement on. There may be some fine tuning as far as how much is going to be put into income security and things of that sort, but there are not major disagreements.

Therefore I hope that we can move this part of the bill very quickly.

Unfortunately, Title II of this bill is inconsistent with the spirit of cooperation as exhibited in Title I. Its effect is to impede, delay and to stop plant closings, rather than to aid the adjustment of workers into new jobs.

I was intrigued by the chart back here of plant closings. And I apologize for not bringing my chart, because as an overlay on that, we could probably put the 750,000 new businesses that started up last year. That would probably be a good overlay, looking to the brighter side of what is going on in the place of employment, because new businesses are starting up, and there are new opportunities. And our challenge is to make sure that we educate and train our labor force for those new opportunities.

Certainly in a changing society, you are going to have, as difficult as it may be, from time to time, plant closings. People make decisions that you are going to have to have that for economic necessity and other things.

When those decisions are reached, I believe that it is imperative, and that is what Title I tries to do, and that is why I want to move that as quickly as possible, to get into the education and training of these people who are going to be faced with that dilemma.

I also think, looking at the chart over here on the worker dislocation, that we could probably put a little overlay on that map as well and talk about the 12.4 million new jobs that have been created since 1980, and talk about 93 percent of the American population that is working, and show about the new jobs and the new opportunities that we are having; focus on that aspect and see how we are going to work with those new jobs and opportunities, which I think Title I addresses, and how we are going to work on it at an early basis—instead of arguing about whether someone in fact is going to have a plant closing or not, and if that decision has been made, why don't we start looking at how we are going to get that person trained, how we are going to get that person educated, and how that person is going to have that skill for that new job and that new opportunity.

Let us talk about the future of that individual and not necessarily about the past.

Good worker adjustment programs must be cooperative, not confrontational, and therein lies the inconsistency between Title I and Title II; where Title I is a cooperative venture, and Title II, unfortunately, is very confrontational. This title will only increase the very adversarial and confrontational dimension of labor-management relations that are also anticompetitive and very unproductive.

The Lovell Task Force, which I am sure everyone is aware of, where the distinguished Mac Lovell sat down and tried to come up with a consensus and an agreement on what we ought to do on the very sensitive issue of plant closings, had very reputable people from business and labor come together. In testimony before the Employment Subcommittee just recently, he said that they were unable to reach a consensus, that it was in fact an issue of great dispute.

Certainly, labor unions are free to bargain or not to bargain for notice on a business closing. It is my understanding that many collective bargaining agreements contain provisions requiring notice of business closings as well as layoffs. It is inconsistent with free collective bargaining for the government to mandate a result that we have left to the collective bargaining process.

We should move ahead with the noncontroversial portion of this bill—the new worker adjustment program—for which the Administration has asked $980 million. But we should not delay implementation of the needed program by enmeshing it in an unnecessary controversy at this particular time.

I hope that we are able to move quickly. Title I certainly will have my support, and I look forward to working with the Chairman.

Senator METZENBAUM. Thank you, Senator Quayle.

Senator Hatch, we are very happy to have you with us this morning.

OPENING STATEMENT OF SENATOR HATCH

Senator Hatch. I am happy to be here, Mr. Chairman.

I want to congratulate both Chairmen of these two Subcommittees for holding these hearings at this time, because I think that the plight of dislocated workers is really one of the most important issues that we have before Congress in this, the 100th Congress; and I think both Chairmen deserve to be commended for initiating these hearings on this issue so expeditiously.

But I think we have to be careful, however, that in helping dislocated workers, we avoid creating any new dislocated workers. I am concerned that legislation which mandates Federal requirements on the private sector for advance notice, consultation, and disclosure will ultimately cost a lot more jobs than it will save. That has been our experience through the years, and if we have learned anything, it is that when the Federal Government dips its ugly hand into these various areas, it generally costs jobs and costs us a lot more than it helps.

We will merely, it seems to me, with this type of bill postpone the day of reckoning, and at great cost to both business and government. Any legislation which purports to help dislocated workers must facilitate the adjustment to new economic conditions and not stonewall.

I might add that I believe that there can be alternatives to the mandatory provisions included in S. 538, and I hope that the Committee will consider them as well. I solicit all witnesses' proposed suggestions on this particular subject, because I think that is important.

And finally, at a time when there is bipartisan interest in making America more competitive in domestic and foreign markets, I think we have to make sure that any additional restraints imposed on private industry comport with that worthy objective.

So I look forward to working with my colleagues as we address an issue of utmost importance to both Utah and the nation, and it is my sincere hope that we take the necessary time to fashion a solution which will benefit both the dislocated worker and the economy as a whole. And I hope in our zeal to have Federal legislation, we will not make it oppressive legislation that really is going to cost us jobs.

Thank you, Mr. Chairman.

Senator Metzenbaum. Thank you, Senator Hatch.

Without objection, immediately following my own statement, I am going to include in the record a statement of Senator Simon. This is a joint hearing, and we are sitting as a joint Committee.

And at this point in the proceedings, I will include in the record a statement from Senator Gordon Humphrey.

OPENING STATEMENT OF SENATOR HUMPHREY

Senator Humphrey. Mr. Chairman, when S. 538 was introduced, I asked my staff to analyze title II—the plant closings provisions. I am releasing the analysis today and ask that it be included in the record.

The analysis is too kind in its conclusion that title II is a Marxist economist's dream.

Ironically, S. 538, as now written, will dash any hope of saving the American heavy manufacturing industry. If, as this bill proposes, companies are forced to consult every time their workforce fluctuates or an inefficient plant is closed, smokestack America will be dragged into the grave.

Let's not kid ourselves, this special interest legislation is aimed right at the steel and auto industries. It is designed to make it more difficult to accomplish the inevitable—a restructuring and streamlining of these basic industries, a process that has been going on for over 30 years: peak steel industry employment occurred in 1953 when 726,000 workers were employed; by 1982 less than 400,000 workers remained.

The Congressional Budget Office, in a report issued recently, concluded that unless antiquated plants were closed and anti-trust policy relaxed, American steel companies would never become competitive again.

Yet, this legislation goes in exactly the opposite direction by diluting decisionmaking to the point that decisions on which the life of a heavy industry depend will take forever. It's like having a committee in the emergency room decide how to treat a comatose patient who is bleeding profusely and has a weak pulse. And you can bet that some of the members of the committee will not have the patient's interest at heart, rather their own political self interest.

It is apparent this bill would inhibit the closing of any facility—troubled or otherwise. Countless lawsuits seeking injunctive relief will delay the inevitable; U.S. district courts will become local citidals of economic wisdom and distributors of scarce resources.

Once again, shamefully, the majority has put together a witness list totally devoid of any economic expertise. Could it be that no renowned economist has anything praiseworthy to say about this legislation? I suspect that some of our colleagues will inevitably draw this conclusion, especially if they should happen to read the bill.

Senator **METZENBAUM**. I am very happy to welcome my own Governor today and my friend, who is here from Columbus to speak on this subject. Governor Celeste has addressed himself to this issue on more than one occasion publicly as well.

I am happy to have you with us, Governor Celeste, and will be glad to hear from you at this time.

STATEMENTS OF HON. RICHARD CELESTE, GOVERNOR OF THE STATE OF OHIO; AND HON. JAMES P. MORAN, JR., MAYOR OF ALEXANDRIA, VA, ON BEHALF OF U.S. CONFERENCE OF MAYORS, ACCOMPANIED BY LAURA D. WAXMAN, ASSISTANT EXECUTIVE DIRECTOR, U.S. CONFERENCE OF MAYORS

Governor **CELESTE**. Thank you very much, Mr. Chairman. I appreciate this opportunity to appear before you and the Subcommittees today to begin discussion of the proposed Economic Dislocation and Worker Adjustment Act.

I appreciated your opening comments and those of your Senate colleagues, particularly your colleagues. I would propose to take issue with several of their comments along the line.

As Governor of a State that has been hard-hit by economic dislocation, I feel especially grateful to you and the cosponsors of Senate Bill 538 because this legislation clearly identifies some of the most critical aspects of the dislocated worker crisis as we have experienced it firsthand in the State of Ohio.

First, dislocation has become a large and permanent part of our economy. Second, the response on the Federal level has been scattered and frankly, insufficiently funded. And third, I would submit that advance notice of job loss is a crucial element in any successful adjustment strategy.

As you know, in Ohio since 1979, we have lost more than a quarter of a million manufacturing jobs. Our traditional industries, like steel, auto, rubber and glass have been the hardest hit, but it extends throughout the economy.

While we can point to a significant homegrown recovery, the State is still regularly suffering from job losses which are caused by the rapidly changing economy. Within the last two weeks, B.F. Goodrich announced the elimination of 800 jobs in Akron, and General Motors announced that it would close its Norwood facility in August of this year, a year ahead of its previously announced schedule, that will eliminate 4,000 jobs.

All of this simply underscores the fact that this type of change is going to be an everyday aspect of our economy as we move forward.

When I became Governor in 1983, Ohio had the second highest unemployment rate in the country. We knew that we had to move decisively on a number of fronts to regain our competitive edge, to diversify what we were doing in manufacturing and throughout our economy to put people back to work. I am pleased to say that Ohio is today a leader among the States in job creation.

Although more Ohioans are working than ever before, the jobs they are working in are different. Many of these jobs require new and expanded skills, and a flexibility and adaptability never before expected.

Let me not talk about some of the things that have happened in terms of the job replacement in our State, but underscore that we consider our work force to be the key ingredient in successful recovery, and we understand that this work force is going to face a tremendous world of change. A high school student coming into the workplace today will probably change jobs four to six times during the course of her or his work life.

We understand that by the year 2000, 90 percent of all new jobs will require post-secondary training.

Therefore, this work force has to have a foundation in basic skills as well as advanced skill training if the challenges of the workplace in the decades are to be met.

We have made substantial strides to provide this kind of education and training to young Ohioans. I will not again go through each of the steps that are part of our effort in recovery in education and technology and technology transfer, and a focus on advanced technologies and moving them into the marketplace.

But I would submit, Mr. Chairman, that Ohio and our sister States have really become the laboratories for developing new ways to compete in the world marketplace. I would encourage you and your colleagues as you discuss the direction you take in worker adjustment to look to our experience.

The reality is however, that no Governor and no State can alone fashion its future in a vacuum. We will continue to be tested by fierce international competition. We will continue to be helped or hindered by Federal policies beyond our control. A single State does not have the capacity to control many of the powerful economic forces with which we must contend, and this is particularly true in the area of worker dislocation. The very nature of the problem demands a comprehensive Federal approach combined with significant discretion at the State and local level in implementing an overall national effort.

At present, Federal efforts in this area are scattered. The major problems—the Dislocated Worker Program; Title III, which I do believe has been a very positive program; and Trade Readjustment Assistance—have been under constant threat of funding loss. As I speak with you today, there is a U.S. Department of Labor rescission request pending on the States' allotment of program year 1987 Title III funds. Ohio has consistently fully obligated its Title III allocations. As of today, all but 3 percent of our Title II dollars for this program are legally obligated. That remainder, $114,000, is what we have to respond to requests for help between now and July 1. I might add that our original 1986 allocation of $4.6 million was a 58 percent cut over the year before—not lack of need. We are trying to put that money to work as effectively and as efficiently as possible.

This rescission request and the uncertain status of new national worker adjustment programs make our planning for future dislocated workers most difficult.

I want to thank you for the awareness which you have stressed of the critical need of legislation in this area, particularly to handle the transition of JTPA Title III programs presently in operation.

In addition, few funds are available through the Trade Adjustment Assistance to provide the training which the Trade Act says is a worker's right when they are dislocated because of unfair foreign competition. As you are aware, Ohio Congressman Don Pease is a vigorous champion of that right. Recently, we in Ohio requested $2.1 million in TAA funds. In response, we received $481,000—less than one-quarter of that total request.

The proposed Economic Dislocation and Worker Adjustment Act recognizes that a comprehensive, coordinated, innovative approach to the issues of worker adjustment is critical and that a substantially higher level of funding is required if this nation is to meet the challenges ahead.

It also recognizes the need to broaden the definition of dislocated workers so that we can serve all of those affected in a community when a plant closes or when massive layoffs occur.

The legislation recognizes the need of the self-employed worker affected by economic dislocation—and I might include the farmer in that—and the needs of the displaced homemaker.

There are a number of specific elements of the proposal which echo our experience in Ohio as effective strategies to address the problem, and this is where I would like to focus.

Early in 1983, we created a rapid-response team, called the Community Economic Assistance Team, which coordinates the State's response to a potential plant closing or mass layoff. Ohio's Department of Development and the Bureau of Employment Services work jointly, organizing local rapid-response teams which include labor, management, community leaders and public officials.

In effect, we have created a Dislocated Worker Unit within the Bureau of Employment Services by placing Trade Adjustment Assistance and Title III programs in the same unit. This unit also coordinates employment service resources and, when appropriate, other agency resources, so that the response from State government to economic dislocation is unified.

The bill's emphasis on tripartite consultation is excellent. Last year, I appointed a Governor's Tripartite Advisory Committee on Labor-Management Cooperation which funds a number of local committees and resource centers. I might say the State of Ohio has committed $2 million to labor-management cooperation, so we do not stint in this area. This is an ongoing effort to make Ohio competitive, to prevent job loss, and to facilitate economic adjustment where necessary.

I would submit that if there is an element missing in this legislation, it is the ability for Governors to use some worker adjustment dollars to prevent job loss. I am aware that any job loss prevention strategy requires safeguards to assure that the public funds do not replace investment that should be made—appropriately made—by the private sector.

But I think it really is important to encourage and foster a State and Federal job loss prevention partnership.

In Ohio, as an example, community colleges play a vital role in worker training to prevent dislocation. An example of this is the partnership between one of our technical colleges in Marion, Ohio and the Whirlpool Corporation, which provides ongoing training that will help Whirlpool remain a viable American producer in microwave oven appliances—the only one, I understand, in the United States. I would encourage you not to overlook this dimension.

I am particularly excited by the provision for self-employment opportunity under the demonstration programs. Our JTPA Title III program has funded eight pilot projects on entrepreneurship training across the State. Although it is still too early to draw a final conclusion, a detailed evaluation just completed suggests that self-employment can be and must be a very real alternative for a number of dislocated workers. In some communities that, frankly, is the only viable option.

It is imperative that more experiments be conducted to define fully a successful entrepreneurship program.

A central element of this legislation is Title II, advance notification. Mr. Chairman and Senator Quayle, you indicate that this is likely to be controversial. I would submit that the only way we will be successful in designing a worker adjustment program for the 1990s in this country is if we confront controversy and deal with it—not walk away with it or wish it did not exist.

Advance notification of a closing or mass layoff is an essential part of any serious, any responsible attempt to provide worker and community adjustment. It is not an excuse to keep plants open; it is an essential tool to ensure that workers and their communities are in a position to adjust and adjust responsibly.

The legislation itself points out that international experience as well as practice in the United States demonstrates that advance notification significantly improves the ability of the work force and the community to adjust. The requirement of disclosure of certain key information, it seems to me, is the logical extension for this finding. Workers, plant managers and their communities have a right and really a need for the information that helps them to determine the options before them as they rebuild their economies and their lives.

And there is an additional important point to be made here. if prior notification and disclosure of information is required by national policy, then States must have the commitment of Federal dollars to be able to respond in a timely and adequate fashion.

Therefore, I support mandatory prior notification and the disclosure of information necessary for an adjustment strategy in the context of a well-funded worker adjustment program.

While I have some questions—and I am sure we all have some questions—about the consultation process in the bill, there is no question that mandatory prior notification can be constructive and critical and should not be viewed as confrontational.

Let me give you some experience from Ohio in operating dislocated worker programs that show how early intervention strategies can work. I want to provide two specific Ohio examples.

The E.W. Bliss Company, in Salem, Ohio, is a manufacturer of steelmaking equipment. After many years of operation as a family company, the company was purchased by out-of-State owners—and the State, in fact, helped to facilitate that purchase. Business declined, and the new owners faced the choice of selling or closing. They contacted the Ohio Department of Development with sufficient lead time before the decision was implemented. The State was able, working with the steelworkers, to assist in structuring an employee stock ownership plan, and today the company is operating successfully in Salem, Ohio—under new ownership—and it has significantly increased the number of jobs from the time of original contact with the State.

In another case, General Electric, under its collective bargaining agreement, as you pointed out, Senator Quayle, restructured its lamp division, resulting in closings or major work force reductions at several plants. GE's collective bargaining agreement called for six months' advance notice. The lead time allowed the Ohio Bureau of Employment Services to help establish worker assistance centers for all affected sites and to begin training and job search assistance before the workers lost their jobs, before the trauma set in, before the really serious problems that attend seeing the plant gates swing shut became the reality in their work lives.

Knowing ahead of time clearly improved the State's ability to help. In each of these cases, it was the spirit and determination of the local labor and management groups which made the project work. These are examples of what can be done when time is available to act, but too often we lack the time, and the less time there is, the more severe, I would submit, labor-management confrontation is likely to be.

Prior notification always brings the same initial response from the State of Ohio, from the work force, from the local community—let us do everything in our power, using all appropriate resources, to aid management to reverse the decision to close if that is possible. Saving jobs, I would submit, is always preferable to implementing an adjustment strategy.

In addition to E.W. Bliss, I could cite other examples of where, because we knew early, we were able to come up with a formula that kept quality jobs, kept plans in production rather than seeing the plants close. That was not always the case.

But if the decision is irreversible, prior notification allows a mobilization of resources at all levels in a timely way, to minimize the suffering caused by job loss. Our emphasis will continue to be on the use of labor-management-government cooperation to deliver a comprehensive and coordinated package of assistance to those in need. That is our responsibility, and we intend to fulfill it. And I appreciate the flexibility that is provided for Governors under this legislation. I think all 49 of my colleagues will cheer that provision.

But I want to stress this. The fact of the matter is, if we allow the decision on plant closing notification issues to become an issue dealt with at the State level, what we do is invite State-by-State competition of the wrong kind. Then we are not competitive with Japan or Brazil or Singapore or our real competition; then we are spending our time trying to figure out how we compete with each other as neighbors.

And I would submit setting a Federal standard which is realistic and workable, and which encourages timely labor-management cooperation, is a key.

I believe this legislation truly offers the opportunity for human resource planning in the best possible way, in the private sector, with timely support from those of us in the public sector, and provides the opportunity for the development of a responsive, flexible, national labor market strategy.

I believe it strikes an appropriate balance between Federal oversight and State initiative. It ensures a strong leadership role for the States and the communities. We appreciate that. It offers the opportunity and indeed encourages public-private, labor-management, State and local partnerships at their very best.

I certainly support this legislation and encourage the Committee to act on it quickly. We at the State level would like to know the resolution of this issue and the resources available at the earliest possible opportunity.

[The prepared statement of Governor Celeste and responses to questions submitted by Senator Hatch follow:]

STATEMENT OF

GOVERNOR RICHARD F. CELESTE
STATE OF OHIO

before the

SUBCOMMITTEE ON LABOR
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

on

"THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ACT"

March 10, 1987

Thank you, Mr. Chairman, for the opportunity to appear before you today to begin the discussion of the proposed "Economic Dislocation and Adjustment Act".

As governor of a state hard hit by economic dislocation, I congratulate you, Senator Metzenbaum, and your colleagues, Senators Simon and Kennedy and others for the introduction of this important piece of legislation. This legislation clearly identifies the most critical aspects of the dislocated worker crisis as we have experienced it in Ohio.

First, dislocation has become a large and permanent part of our economy.

Second, the response on the federal level has been scattered and insufficiently funded.

Finally, advance notice of job loss is a crucial element of any adjustment strategy.

In Ohio, since 1979, we have lost 286,000 manufacturing jobs. Our traditional industries--steel, auto, rubber and glass--have been hardest hit. While we can point to a significant home grown recovery, the state is still suffering regularly from job losses caused by a rapidly changing economy. Within the last two weeks, B.F. Goodrich announced the elimination of 800 jobs in Akron and General Motors announced it would close its Norwood facility in August, this year a year ahead of schedule, and eliminate 4,000 jobs.

All indications are that this type of change will continue to occur.

When I became Governor in 1983, Ohio had the second highest unemployment rate in the country. We knew that we had to move decisively on a number of fronts to regain our competitive edge in manufacturing and diversify our economy.

Today Ohio is a leader among the states in job creation. Although more Ohioans are working than ever before, the jobs are different, the jobs are fewer, and the jobs require new and expanded skills, and a flexibility and adapatability never before required.

Some of the jobs formerly created by basic steel are being replaced by those in specialty steel shops. The technology of the rubber industry is changing to plastics and polymers and these new jobs, fewer than before, require very different skills to go with new technology.

At the same time, service sector jobs are growing, many at levels of sophistication. They involve products which did not exist a decade ago. Examples are the growing number of jobs in the paralegal field and increasing demand for persons who develop, sell and service new products such as personal computers and rapidly changing software.

In Ohio, our workforce is today, as it always has been, our most valuable resource. But our workers, like millions of Americans, experience dramatic changes in their lives, changes that are disorienting, profound, and far too often, unanticipated.

Our workers will continue to operate in an environment where change is the norm. Those entering the workforce today will change occupations four to six times during their productive years. By the year 2000, 90% of all new jobs will require post-secondary training.

Therefore, this workforce must have a foundation in basic skills as well as advanced skill training if the challenges of the workplace in the next decades are to be met. In the past four years, Ohio has moved aggressively to meet this challenge. Starting at the elementary school level, we are striving to establish statewide standards in reading, math and communications skills.

We dedicate the largest portion of every new tax dollar to education. These efforts will result, in time, in citizens prepared to meet the changes in our society. In higher education, we are continuing Ohio's focus on excellence and challenge.

Our Edison Technology Centers are breaking ground in scientific and economic development while Ohio's eminent scholars challenge our best and brightest to build the future. We are actively reaching out for state of the art new jobs and technologies.

Ohio and our sister states have become laboratories for developing new ways to compete in the world marketplace.

But no governor, no state, can fashion the future in a vacuum. We will continue to be tested by fierce international competition. We will continue to be helped or hindered by federal policies beyond our control. A single state does not have the capacity to control many of the powerful economic forces with which we must contend.

This is particularly true of worker dislocation. The very nature of the problem demands a comprehensive federal approach combined with significant discretion in implementation at both the state and local levels.

At present, federal efforts in this arena are scattered. The major programs - the Dislocated Worker program, Title III of the Job Training Partnership Act and Trade Readjustment Assistance - have been under constant threat of funding loss. As I testify today, there is a US Department of Labor rescission request pending on the states' allotment of Program Year 1987 Title III funds. Ohio has consistently fully obligated its Title III allocations. As of today, all but 3% of our Title III dollars for this program year are legally obligated. That remainder, $114,000 is all we have to respond to requests for help between now and July 1. (And I might add the original 1986 allocation of $4.6 million represents a 58% cut from the year before.)

This rescission request and the uncertain status of a new national worker adjustment program make planning for future dislocated worker programs most difficult. I thank you for your awareness of the critical need in this new legislation to handle the transition of JTPA Title III programs presently in operation.

In addition, few funds are available through Trade Adjustment Assistance to provide the training which the Trade Act says is a worker's right. As you are aware, Ohio Congressman Donald Pease is a vigorous champion of that right. Recently, Ohio requested $2.1 million in TAA funds. In response, Ohio received only $481,000 - less than one-quarter of the total request.

The proposed Economic Dislocation and Worker Adjustment Act recognizes that a comprehensive coordinated innovative approach to the issues of worker adjustment is critical, and that a substantially higher level of funding is required if this nation is to meet the challenges ahead.

It also recognizes the need to broaden the definition of dislocated workers so that we can serve all those affected in a community when a plant closes or massive layoffs occur. The legislation recognizes the needs of the self employed worker affected by economic dislocation as well as the needs of the displaced homemaker. & I would include the farmer in that.

There are a number of specific elements of the proposal which echo our experience in Ohio as effective strategies to address the problem. Early in 1983, we created a rapid response team, called the Community Economic Assistance Team, which coordinates the State's response to a potential plant closing or mass layoff. Ohio's Department of Development and the Bureau of Employment Services, work jointly organizing local rapid response teams which include labor, management, community leaders, and public officials.

In effect, we have created a Dislocated Work Unit within the Bureau of Employment Services by placing Trade Adjustment Assistance and Title III programs in the same unit. This unit also coordinates employment service resources, and when appropriate, other agency resources, so that the response from state government to economic dislocation is unified.

The bill's emphasis on tripartite consultation is excellent. Last year, I appointed a Governor's Tripartite Advisory Board on Labor-Management Cooperation which funds a number of local committees and resource centers. This is an ongoing effort in job loss prevention and economic adjustment.

If there is an element missing in this legislation it is the ability for Governors to use worker adjustment dollars to prevent job loss. I am aware that in any job loss prevention strategy there must be safeguards to ensure that public funds do not replace investment that is most appropriately made by the private sector. However, there is the need to foster a state and federal job loss prevention partnership.

In Ohio, community colleges play a vital role in worker training to prevent dislocation. An example of this is the partnership between one of our technical colleges and Whirlpool Corporation which provides on-going training that will help Whirlpool remain a viable American producer in microwave oven appliances. I would encourage you not to overlook this dimension.

I am particularly excited by the provision for self-employment opportunity. Our JTPA Title III program has funded eight pilot projects on entrepreneurship training across the state. Although it is still too early to draw final conclusions, a detailed evaluation just completed suggests that self employment can be and must be a very real alternative for a number of dislocated workers. It is imperative that more experiments be conducted to define fully a successful entrepreneurship program.

A central element of this legislation is Title II -- advance notification.

Advance notification of a closing or a mass layoff is an essential part of any serious attempt to provide worker and community adjustment. This is not to prohibit a private company from closing a plant, but to provide workers and their communities with the ability to adjust to those closings.

The legislation itself points out that international experience as well as practice in the United States demonstrates that advance notification significantly improves the ability of a workforce and a community to adjust. The requirement of disclosure of certain key information is the logical extension for this funding. Workers, plant managers and their communities have a right to know the information which will help them determine the options before them as they rebuild their economies and their lives.

There is an additional important point to be made here. If prior notification and disclosure of information is required by National policy, then states must have the commitment of federal dollars to be able to respond in a timely and adequate fashion.

Therefore, I support mandatory prior notification and the disclosure of information necessary for an adjustment strategy in the context of a well funded worker adjustment program.

While I have some questions and reservations about the consultation process in the bill, there is no question that mandatory prior notification can be critical. Ohio's experience in operating dislocated worker programs shows that early intervention strategies can work.

Let me provide you with two Ohio examples.

E.W. Bliss Company, in Salem, Ohio, is a manufacturer of steel making equipment. After many years of operation, the company was puchased by out-of-state owners. Business declined and the new owners faced the choice of selling or closing. They contacted the Department of Development with sufficient lead time before a decision was made. The state was able to assist in structuring an ESOP and, today, the company is operating successfully in Salem. And it has significantly increased the number of jobs from the time of original contact with the state.

In another case, General Electric restructured its lamp division resulting in closings or major workforce reductions at seven Ohio plants. GE's collective bargaining agreement called for six months advance notice. The lead time allowed the Ohio Bureau of Employment Services to help establish worker assistance centers for all the affected sites and to begin training and job search assistance before workers lost their jobs.

Knowing ahead of time clearly improved the state's ability to help. In each of these cases, it was the spirit and determination of the local labor and management groups which made the projects work. These are examples of what can be done when time is available to act, but too often this advanced warning is not known.

Prior notification always brings the same initial response from the state of Ohio--we do everything in our power, using all appropriate resources, to aid management to alter the decision to close if at all possible. Saving jobs is always preferable to implementing an adjustment strategy.

But if the decision is irreversible, prior notification will allow a mobilization of resources at all levels in a timely way to minimize the suffering caused by job loss. Our emphasis will continue to be on the use of labor-management-government cooperation to deliver a comprehensive and coordinated package of assistance to those in need.

This timely piece of legislation truly offers the opportunity for human resource planning and the development of responsive, flexible national labor market policy. It strikes an appropriate balance between federal oversight and state initiative. It ensures a strong leadership role for the states and for communities. It offers the opportunity for public and private, labor and management, state and local partnerships at their best.

I encourage the committee to act quickly on this legislation.

Thank you for the opportunity to discuss these issues with you.

STATE OF OHIO
OFFICE OF THE GOVERNOR
COLUMBUS 43266-0601

RICHARD F. CELESTE
GOVERNOR

April 15, 1987

Mr. Al Cacozza
Counsel, Labor Subcommittee
Committee on Labor and Human Resources
608 Hart Senate Office Building
Washington, D. C. 20510-6300

Dear Mr. Cacozza:

In response to your letter enclosing questions submitted by Senator Hatch subsequent to my testimony before the Labor Subcommittee on March 10 I wish to respond as follows:

Q: In your written statement you mentioned that you had several questions and reservations about the consultation provisions of S.538. Would you tell us what your specific concerns are with respect to these provisions?

A: I am convinced that cooperation between the company and the employees is crucial to turning around a tough plant closing situation. I have seen it work repeatedly in Ohio, and I enthusiastically advocate it.

My question about Section 203 is how constructive the consultation can be if it involves a firm which would refuse to sit down with its employees were it not for the threat of federal sanctions.

I grant that in a related area, federal laws requiring collective bargaining have produced positive results from negotiations involving firms which otherwise would have refused to sit down with its employees. However, I have yet to be convinced that with respect to plant closings, required consultation will necessarily work.

As I said in my prepared remarks, consultation or not, I fully endorse the provisions of this bill which require disclosure of information necessary for an adjustment strategy.

Q: As you noted in your testimony, S.538 requires the establishment of tripartite advisory committees. You indicated support for this provision and pointed out that you had already appointed such a committee in Ohio. Do you believe, however, that all governors should be required by federal law to establish and work with such committees? Doesn't this mandate impinge on a governor's ability to develop his or her own economic development/economic dislocation policies and methods for carrying them out?

A: I am also convinced that the role of tripartite advisory committees can be crucial to developing the positive relationships between labor and management necessary to increase productivity and jobs, competitiveness and growth. The importance of such committees should, in my opinion, be stated plainly as national policy and therefore, as the Governor of Ohio, I support the proposal to require all governors to establish such committees as part of a worker readjustment policy. My experience is that such a committee has enhanced Ohio's economic development efforts and our strategies for dealing with economic dislocation.

If you have any further questions please contact Joan Hammond of my staff. She can be reached at (202)624-5844 or (614)466-3817.

Sincerely,

Richard F. Celeste

Richard F. Celeste
Governor

RFC/jm

Senator **Metzenbaum**. Thank you, Governor Celeste. I will have some questions, but I think before we do that, we will hear from Mayor Moran. I will say that we normally have a five-minute rule, and we will implement that. Because you are my Governor, I used the Chairman's prerogative and gave you a little extra time, but Mayor Moran, we will have a five-minute rule for you——

Senator **Quayle**. Thanks a lot. [Laughter.]

Governor Celeste, if my Governor was here, we would have the two-minute rule.

Senator **Metzenbaum**. No, sir. We would give your Governor six minutes.

Senator **Quayle**. You are all heart. [Laughter.]

Senator **Metzenbaum**. Mayor Moran.

Mayor **Moran**. Thank you, Mr. Chairman.

As you know, I am representing the Conference of Mayors, and we do congratulate you on moving so quickly to introduce this legislation because it is a serious national problem. We want to work with you to make sure that the legislation is enacted into law.

Just to quickly review some of the statistics that make it so compelling, 13 million adults lost their jobs in the last five years, and 55 percent of them lost their jobs because of plant closings or business failures; one-third, due to slack work, and the remainder, because their shift or position was abolished. Half of those were manufacturing jobs.

Now, the point is, one-third of those workers have not been reemployed. Of those who did find jobs, 30 percent were employed in jobs that paid them 20 percent or less than their previous job. So these statistics dramatize the situation.

And it is not just individual hardship; it is a community hardship. They are no longer able to contribute to the local economy; they are clearly going to be taking more from the economy in terms of income assistance and social services.

One of the things we want to emphasize is that the community needs to go to work when this happens. It has a dramatic effect upon our school system, our social service requirements, our housing situation, and we will get into that in terms of the notification aspect.

The Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation reported to Secretary Brock that "This is not a problem just for industry or labor or government alone. Rather, it is the concern of every citizen. Protecting the country's investment in human capital ensures a more productive, fully-employed society. The problem is of sufficient magnitude and urgency that it demands an effective coordinated response." That is the point of the notification issue.

You know about the dollar amount and what would be done with each title. Our major concern is that we do not have sufficient assurances that mayors and other local officials will be able to determine how the funds in Title I are to be spent in their communities, or that these funds will be used in tandem with other employment and training dollars. We want to make sure that we are able to coordinate the effort, and that the local officials will be able to play an integral part in any coordinated effort.

Reserving 30 percent of the funds for demonstration and discretionary programs is excellent. It is going to encourage innovative efforts, and that is the kind of thing that is eventually going to give us the long-term solutions to the problem.

We like the Public Works Employment Demonstration Program because it has the dual benefit of providing income and continued employment to workers while improving the deteriorating infrastructure in so many of our cities.

We do not understand, however, why it is proposed that these public works projects could be vetoed by the business and labor representatives on a Private Industry Council, but not by the public members who represent local government.

There appears to be general agreement by representatives of business, labor and local government that advance notification to employees and local governments of plant closing and large-scale permanent layoffs is good policy. Obviously, Secretary Brock's Task Force agreed with this, and we know that you do as well, since it is a key provision of Senate 538.

We wanted to stress that the majority of workers who have lost their jobs have in fact received little notice or assistance in the adjustment process. A study by GAO showed that when a business establishment closed in which at least 100 employees lost their jobs, only 18 percent of those businesses provided general notice 30 to 90 days in advance to white-collar workers and only 14 percent provided such notice to blue-collar workers. Specific notice 30 to 90 days in advance was provided by only 17 percent of the establishments to white-collar workers and 13 percent to blue-collar workers.

As you know, general notice is an advance warning with no date specified, and specific notice informs workers of their actual termination date. Well, that is the reality. In fact, they are not getting notification. It is the exception rather than the rule when there is notification advanced.

So we clearly feel that this is a very needed provision.

We know that the big debate is whether it should be voluntary or mandatory notification. We feel because the track record is in fact so poor, and because so many workers and local communities have received little or no notice of any of these layoffs that really bind our hands in terms of being able to respond effectively, the Conference of Mayors feels very strongly that notification must be mandatory. That will give the employer, the employees, and the State and local governments time to respond to the impact the closing or layoff will have on the community and on the specific workers affected. Through that consultation process, all parties will be able to explore alternatives to the plant closing or layoff and develop efforts to assist the affected workers.

We need to know what the impact is going to be to our school system, what the impact is going to be in our housing situation, whether we are going to have to implement a relocation assistance program for families that are no longer going to be able to afford their mortgages, and certainly, in terms of our human service network. We have got to be able to hire those people and train them to deal with these people in need. So we think it is awfully important, and obviously, we applaud your involvement and quick action on the legislation, and we think that the concerns we have raised can be adequately addressed, and we look forward to achieving that with you.

Senator **Metzenbaum**. Thank you, Mayor Moran.

Mayor **Moran**. Was that pretty much five minutes?

Senator **Metzenbaum**. A little bit over, but since you were at the very critical point where you were saying that you endorse the idea of notification and consultation, I was not going to cut you off. [Laughter.]

[The prepared statement of Mayor Moran follows:]

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STATEMENT BY

JAMES P. MORAN, JR.
MAYOR OF ALEXANDRIA

on behalf of the

UNITED STATES CONFERENCE OF MAYORS

before the

SUBCOMMITTEE ON LABOR
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

MARCH 10, 1987

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM JAMES P. MORAN, JR., MAYOR OF ALEXANDRIA. I APPEAR BEFORE YOU THIS MORNING ON BEHALF OF THE U.S. CONFERENCE OF MAYORS. WE CONGRATULATE YOU ON MOVING SO QUICKLY TO INTRODUCE LEGISLATION TO ADDRESS THE SERIOUS PROBLEM OF DISLOCATED WORKERS IN THIS COUNTRY. WE ARE READY TO WORK WITH YOU TO MAKE SURE THAT SUCH LEGISLATION IS ENACTED INTO LAW.

ACORDING TO THE BUREAU OF LABOR STATISTICS, 13.1 MILLION WORKERS AGED 20 AND OLDER LOST THEIR JOBS BETWEEN JANUARY OF 1981 AND JANUARY OF 1986. OF THOSE EMPLOYED THREE YEARS OR MORE, 55 PERCENT LOST THEIR JOBS BECAUSE OF PLANT CLOSINGS OR BUSINESS FAILURES, ONE-THIRD DUE TO "SLACK WORK," AND THE REMAINDER BECAUSE THEIR POSITION OR SHIFT WAS ABOLISHED. ABOUT ONE-HALF OF THESE WORKERS LOST MANUFACTURING JOBS. ONE-THIRD OF THESE WORKERS HAVE NOT BEEN REEMPLOYED. OF THOSE WHO HAVE FOUND NEW JOBS, 30 PERCENT WERE EMPLOYED AT JOBS WHICH ENTAILED PAY CUTS OF 20 PERCENT OR MORE.*

THESE STATISTICS DRAMATIZE THE PROBLEMS THAT TOO MANY HARD WORKING AMERICANS FACE. LONG TERM UNEMPLOYMENT HAS A DEVASTATING EFFECT ON A COMMUNITY AND ON THE INDIVIDUALS INVOLVED. THERE ARE PERSONAL AND FINANCIAL HARDSHIPS. THERE ARE COSTS TO THE LOCAL COMMUNITY. THE DISLOCATED WORKER AND HIS OR HER FAMILY ARE NO

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* "Reemployment Increases Among Displaced Workers," News, United States Department of Labor, Bureau of Labor Statistics, October 14, 1986.

LONGER ABLE TO CONTRIBUTE TO THE LOCAL ECONOMY, AND IN FACT OFTEN MUST TAKE FROM IT TO RECEIVE THE HELP AND INCOME ASSISTANCE THEY NEED TO GET BY. AND THE NATION AS A WHOLE LOSES THE PRODUCTIVITY OF EXPERIENCED WORKERS. AT A TIME WHEN WE ARE SO CONCERNED WITH OUT COMPETITIVENESS IN THE WORLD ECONOMY, WE CAN HARDLY AFFORD TO WASTE SUCH A SIGNFICIANT AMOUNT OF HUMAN CAPITAL.

THE SECRETARY OF LABOR'S TASK FORCE ON ECONOMIC ADJUSTMENT AND WORKER DISLOCATION IN ITS DECEMBER 1986 REPORT TO SECRETARY WILLIAM E. BROCK SAID THAT THE PROBLEM OF WORKER DISLCATION "IS NOT ONE FOR INDUSTRY, OR LABOR, OR GOVERNMENT, ALONE. RATHER IT IS THE CONCERN OF EVERY CITIZEN. PROTECTING THE COUNTRY'S INVESTMENT IN HUMAN CAPITAL ENSURES A MORE PRODUCTIVE, MORE FULLY EMPLOYED SOCIETY FOR ALL....THE PROBLEM IS OF SUFFICIENT MAGNITUDE AND URGENCY THAT IT DEMANDS AN EFFECTIVE COORDINATED RESPONSE WITH SPECIAL PRIORITY BY BOTH THE PUBLIC AND PRIVATE SECTORS."

THE BILL THAT YOU HAVE PROPOSED, AND WHICH WE DISCUSS TODAY, S 538, WOULD ENACT INTO LAW MANY OF THE RECOMENDATIONS OF THE SECRETARY'S TASK FORCE. IT WOULD AUTHORIZE A NEW FEDERAL PROGRAM OF SERVICES TO DISLOCATED WORKERS, FUNDED AT $980 MILLION. AS PROPOSED, 70 PERCENT OF THE FUNDS WOULD BE AVAILABLE FOR JOB TRAINING, JOB SEARCH ASSISTANCE, CORRECTING BASIC EDUCATION DEFICIENCIES, VOCATIONAL AND ON-THE-JOB TRAINING AND INCOME SUPPORT. THESE ARE SERVICES BADLY NEEDED BY THIS POPULATION, SINCE ONLY ABOUT FIVE PERCENT OF DISLOCATED WORKERS ARE CURRENTLY SERVED THROUGH THE JOB TRAINING PARTNERSHIP ACT.

OUR ONLY CONCERN REGARDING THIS TITLE IS THAT IT DOES NOT CONTAIN ASSURANCES THAT MAYORS AND OTHER LOCAL OFFICIALS WILL BE

ABLE TO DETERMINE HOW THE FUNDS ARE TO BE SPENT IN THEIR COMMUNITIES OR THAT THESE FUNDS WILL BE USED IN TANDEM WITH OTHER EMPLOYMENT AND TRAINING DOLLARS. IN ADDITION, WHEN A RESPONSE TEAM IS CALLED IN BECAUSE OF A PLANT CLOSING OR A MAJOR LAYOFF, IT IS CRITICAL THAT THE MAYOR BE INVOLVED. WHILE WE NEED TO PROVIDE MORE ASSISTANCE TO DISLOCATED WORKERS, WE SHOULD MAKE SURE THAT THIS ASSISTANCE IS COORDINATED WITH EXISTING EFFORTS.

RESERVING 30 PERCENT OF THE FUNDS FOR DEMONSTRATION, EXEMPLARY AND DISCRETIONARY PROGRAMS IS AN EXCELLENT APPROACH. THIS TITLE SHOULD ENCOURAGE INNOVATIVE EFFORTS AND COULD TEST BETTER WAYS OF MOVING DISLOCATED WORKERS BACK INTO PRODUCTIVE EMPLOYMENT. THE PROVISION OF TRAINING LOANS AND THE USE OF UNEMPLOYMENT INSURANCE BENEFITS TO HELP START-UP BUSINESS VENTURES HAVE BEEN USED BY OTHER COUNTRIES AND CERTAINLY ARE WORTH TRYING HERE. THE PUBLIC WORKS EMPLOYMENT DEMONSTRATION PROGRAM WOULD HAVE THE DUAL BENEFIT OF PROVIDING INCOME AND CONTINUED EMPLOYMENT TO WORKERS AND IMPROVING THE DETERIORATING INFRASTRUCTURE AT THE SAME TIME. WE DO NOT UNDERSTAND, HOWEVER, WHY IT IS PROPOSED THAT THESE PUBLIC WORKS PROJECTS COULD BE VETOED BY THE BUSINESS AND LABOR REPRESENTATIVES ON A PRIVATE INDUSTRY COUNCIL, BUT NOT BY THE PUBLIC MEMBERS WHO REPRESENT LOCAL GOVERNMENT.

THERE APPEARS TO BE GENERAL AGREEMENT BY REPRESENTATIVES OF BUSINESS, LABOR AND LOCAL GOVERNMENT THAT ADVANCE NOTIFICATION TO EMPLOYEES AND LOCAL GOVERNMENTS OF PLANT CLOSINGS AND LARGE SCALE PERMANENT LAYOFFS IS GOOD POLICY. THE SECRETARY'S TASK FORCE AGREED WITH THIS, AND OBVIOUSLY YOU DO AS WELL SINCE ADVANCE NOTIFICATION IS A KEY PROVISION OF S 538. DESPITE THE FACT THAT

MOST PARTIES SEE ADVANCE NOTIFICATION AS A KEY COMPONENT OF A SUCESSFUL ADJUSTMENT EFFORT, THE MAJORITY OF WORKERS WHO HAVE LOST THEIR JOBS HAVE RECEIVED LITTLE NOTICE OR ASSISTANCE IN THE ADJUSTMENT PROCESS. A STUDY BY THE GENERAL ACCOUNTING OFFICE OF BUSINESS ESTABLISHMENT IN WHICH AT LEAST 100 EMPLOYEES LOST THEIR JOBS DURING 1983 AND 1984 SHOWED THAT ONLY 18 PERCENT OF THE BUSINESSES PROVIDED GENERAL NOTICE 30 TO 90 DAYS IN ADVANCE TO WHITE-COLLAR WORKERS AND ONLY 14 PERCENT PROVIDED SUCH NOTICE TO BLUE-COLLAR WORKERS. SPECIFIC NOTICE 30 TO 90 DAYS IN ADVANCE WAS PROVIDED BY 17 PERCENT OF THE ESTABLISHMENTS TO WHITE-COLLAR WORKERS, BY 13 PERCENT TO BLUE-COLLAR WORKERS. GENERAL NOTICE IS AN ADVANCED WARNING WITH NO DATE SPECIFIED. SPECIFIC NOTICE INFORMS WORKERS OF THEIR ACTUAL TERMINATION DATE.

WE RECOGNIZE THAT THERE IS MUCH DEBATE RIGHT NOW AS TO WHETHER NOTICE SHOULD BE VOLUNTARY OR MANDATORY. BECAUSE THE TRACK RECORD IS SO POOR, BECAUSE SO MANY WORKERS AND LOCAL COMMUNITIES HAVE RECEIVED LITTLE OR NO NOTICE OF AN IMPENDING PLANT CLOSING OR A MAJOR LAYOFF, THE CONFERENCE OF MAYORS STRONGLY AGREES THAT NOTIFICATION, AS PROVIDED FOR IN S 538, MUST BE MANDATORY. THAT WILL GIVE THE EMPLOYER, THE EMPLOYEES AND THE STATE AND LOCAL GOVERNMENTS TIME TO RESPOND TO THE IMPACT THAT THE CLOSING OR LAY OFF WILL HAVE ON THE COMMUNITY AND ON THE SPECIFIC WORKERS AFFECTED. THROUGH A CONSULTATION PROCESS ALL PARTIES WILL BE ABLE TO EXPLORE ALTERNATIVES TO THE PLANT CLOSING OR LAY OFF AND TO DEVELOP EFFORTS TO ASSIST THE AFFECTED WORKERS.

AGAIN, MR. CHAIRMAN, WE APPLAUD YOUR QUICK ACTION ON THIS LEGISLATION. WE ARE CONFIDENT THAT THE CONCERNS WE RAISED CAN BE ADDRESSED, AND WE LOOK FORWARD TO WORKING WITH YOU TO SEE THE BILL PASSED.

Senator **Metzenbaum**. Ms. Waxman, we are happy to welcome you to the table. I think you are the Government Relations Director for the Conference of Mayors; is that correct?

Ms. **Waxman**. Yes, Senator. I am an Assistant Executive Director of the U.S. Conference of Mayors.

Senator **Metzenbaum**. We are happy to have you with us.

Ms. **Waxman**. Thank you.

Senator **Metzenbaum**. Governor Celeste, I know you have studied both our bill and the Administration's worker adjustment proposal. Both bills seek to provide training and reemployment assistance that is comprehensive, prompt, and flexible.

How would you compare the Administration's approach with S. 538 in terms of meeting that goal?

Governor **Celeste**. Well, I prefer S. 538. I think first the definition of the displaced worker is broader, and I think that is very important, it is more inclusive. There is substantial additional discretion provided to State and local government, as I read it, with 70 percent of the funds directly allocated toward us.

One of the problems with the funding—and this is true in our Title III and how we carry it forward from year to year—is going back on quarterly allotment. I mean, we spend more time processing paper than dislocated workers, too frequently, and I think that is a serious problem.

I think that there are some very important creative dimensions under the demonstration section in Title III that, as I indicated, would point in the direction of programs that I think could work very beneficially—encouraging entrepreneurship for dislocated workers; the public service work, that opportunity with some income support which I think is certainly worthwhile exploring.

It seems to me that there is a difference in terms of funding in that the Administration proposes to generate its $980 million by including both Title III funds and the Trade Adjustment Act money, and I do not sense that that is the case in terms of your funding, but I may not be clear on that.

Finally, of course, the area of mandatory notification which, as I indicated, it seems to me is a critical ingredient in a coherent national strategy for worker adjustment.

Senator **Metzenbaum**. We have a novel procedure in the bill to encourage an individual to go out and try to start his or her own business.

Governor **Celeste**. That is right.

Senator **Metzenbaum**. Normally, when you do that, you would lose your unemployment compensation. But we have put a provision in that you can maintain your unemployment compensation while you are out there, trying to get your business going. Would you care to comment briefly on your reaction to that approach?

Governor **Celeste**. Well, I believe it certainly deserves merit. It is hard enough to venture out into the world of entrepreneurship, high risk as that is, if you have been working in a plant for 15 or 18 or 20 years; you are putting your family's future at risk as you undertake that.

If we want to encourage entrepreneurship, I think having that minimum incentive or protection of being able to maintain your unemployment compensation benefit, it seems to me, is worthwhile. One might even try to figure out whether there is a way to be able to elect to take a block piece of that benefit and convert it into some part of your investment in the enterprise; I do not know.

But I think the more we can encourage and support—these are very mature workers; usually it is the older worker who has a hard time getting back into the arena—to explore the possibilities for self-employment, the better it will be.

Senator **METZENBAUM**. Mayor Moran, many communities provide special incentives, including significant tax exemptions, to attract businesses. Do you think it is fair for a business, after reaping the benefits of these special incentives, to close without even notifying or consulting with the local elected officials? You give them urban development grants, you give them special tax considerations, you help them with respect to industrial revenue bonds, and you do many other things for them—sometimes, direct subsidization or tax abatement. Do you think it is fair, under those circumstances, to close without even notifying the elected official?

Mayor **MORAN**. Well, Senator, I do not know that it is an issue of fairness. Life is not very fair, generally. But I think it is certainly appropriate and smart to do that. There have been so many industrial revenue bonds issued to attract and retain businesses. All over the country, communities have found ways to provide tax advantages to keep them there.

Really, we have a hand-in-glove relationship between the public and private sectors, and this would be inconsistent with that relationship not to notify government well in advance of any plant closings, because it has a dramatic effect throughout the community.

There are so many opportunities that can be gained by advance notification. When local governments, for example, give out contracts for their public works projects, they can encourage the firm to hire the very workers that they know in advance are going to be laid off. They also know other businesses that are likely to come in. We are always going to national conferences and trying to attract businesses. It enables us to target our efforts on what businesses to attract more effectively, because we know what kind of employment capacity is going to be available in the community for these new businesses.

So it is just smart, it makes good sense, and it certainly is appropriate given the relationship that we have had in the past.

Senator **METZENBAUM**. Thank you.

Senator Quayle, do you have any questions?

Senator **QUAYLE**. Yes. Thank you, Mr. Chairman.

First I just want to establish if we are speaking for ourselves or for the Association.

Governor **CELESTE**. I am speaking today as the Governor of Ohio, not for the National Governor's Association. If you would like, I can identify some of the policies on worker adjustment that the NGA has adopted as policy, but for example, on the issue of notification, there is not an NGA position.

Senator **QUAYLE**. On the mandatory notification, do you have any——

Governor **CELESTE**. There is not an NGA position.

Senator **QUAYLE**. There is not an NGA position. Do you have any idea what the majority of the Governors feel on this?

Governor **CELESTE**. I think all reasonable Governors would agree with me, but I am not sure how many. [Laughter.]

Senator **QUAYLE**. Do we have a majority of reasonable Governors out there? I guess that is the question.

Governor **CELESTE**. Mr. Chairman, Senator Quayle, I cannot give you an exact answer.

Senator **QUAYLE**. You do not really know, then.

Senator **METZENBAUM**. Was the issue ever put to a vote?

Governor **CELESTE**. No. We have not reached that point in it. There has been discussion of the issue, but not in the framework of this year's policy resolution.

Senator **QUAYLE**. Mayor Moran, what about the U.S. Conference of Mayors? Are you here individually, or are you representing their position?

Mayor **MORAN**. I am representing their position, Senator, and they have not taken a specific vote on this issue, but it is fully consistent with prior votes that have been taken on related issues.

Senator **QUAYLE**. But they have voted in the past on mandatory notice?

Mayor **MORAN**. Well, not mandatory notice, no.

Senator **QUAYLE**. Well, that is a critical part of this bill. Now, are you speaking for them on the mandatory notification, that they support it, or are you speaking as an individual?

Mayor **MORAN**. Ms. Waxman is going to respond to that.

Ms. **WAXMAN**. If I may explain, Senator, the issue of mandatory notice of plant closings has not come up as a policy issue with the Mayors.

Senator **QUAYLE**. It has not come up. Okay.

Ms. **WAXMAN**. However, the idea of mandatory notice with the local government is entirely consistent with all of our other policy.

Senator **QUAYLE**. But the mandatory plant notification has not been addressed by the Conference of Mayors.

Ms. **WAXMAN**. Not in a specific policy resolution.

Senator **QUAYLE**. So therefore you have not addressed that issue, as the Governors Association has not addressed it, either. Okay.

Governor, since you support the mandatory notification, I wonder, have you suggested this to your Ohio State Legislature?

Governor **CELESTE**. No. I have pointed out that I do not believe it should be enacted as State law. My position consistently has been that this should be national legislation. Let me put it in the context, if I may, Mr. Chairman and Senator Quayle, of environmental legislation.

It seems to me one of the really devastating situations would be if States bid against each other to see who could do less in the way of regulating the environment. And the same, it seems to me, is true in terms of national standards on worker adjustment. It should be a Federal law, not a State law.

Senator **QUAYLE**. Now, let us separate aside the worker adjustment and the point I want to focus on for a while is the mandatory notification.

Governor **CELESTE**. I agree.

Senator **Quayle**. I think you said, if I remember correctly in your statement, that you thought that the mandatory notification was essential to increasing productivity and competition—something along those lines—am I correct?

Governor **Celeste**. No. What I said was it is essential for the most efficient and effective worker adjustment policy.

Senator **Quayle**. Do you think that mandatory notification will increase productivity?

Governor **Celeste**. Yes, I do.

Senator **Quayle**. Do you think it will increase competition?

Governor **Celeste**. Yes, I do. Could I give you some examples, Mr. Chairman, Senator Quayle?

Senator **Quayle**. Well, if you think it will increase productivity, and it will increase competition, then why wouldn't you recommend it to the General Assembly of Ohio?

Governor **Celeste**. Because I believe it should be adopted as a national standard. Otherwise, Mr. Chairman and Senator Quayle, we know that—to me as a Governor, one of the most discouraging aspects of our effort to become competitive are those people who will say that the competition really is between Indiana and Ohio, when it is not; it is competition between the Great Lakes Region of this country and Singapore or Brazil or Japan or Taiwan.

Now, let me give you a couple of examples of how it increases competition.

Early notification by Standard Oil, which was making a decision to get out of the Carborundum production line, for business strategy purposes, would close a plant in central Ohio, and it did close the plant. But there was still a market for this product. And management of that plant, though it took longer time than the early notification provided, set out to develop a finance plan so that they could get back in business. They have. And Carborundum, Inc. is now more competitive in that specific marketplace than it was when it was operated as part of a larger Standard Oil enterprise.

In New Philadelphia, Ohio, a company called Graydol, which produces lift vehicles, was a division of a larger company. They were closing down that division because they did not feel they could be competitive. They provided voluntarily in this case early notification, and the plant management pursued a plan to finance and take over that plant, which they have done, and they have stayed competitive in a very tough line where we face a lot of foreign competition, and it preserved jobs.

The truth of the matter is the closing decisions are often made by corporate headquarters, far from the plant, and management wants early notification as much as the worker.

Senator **Quayle**. Believe me, as far as a corporate practice—and you have given some good examples where they, in fact, have had advance notice of where they have in fact have had advance consultation and have in fact worked things out in getting the readjustment.

But just getting back to the basic premise, if in fact this is going to be more competitive and more productive, all Governors, our Governor included, are looking for ways to increase productivity and competition even within our States. Sure, we have national and international competition; there is some friction between various regions of the country. But if in fact advance notification, mandatory notification, was really going to increase productivity and increase competition and competitive forces and attract new businesses to the States, which all Governors are very interested in, as well as Mayors, therefore I would think this would be one of the issues that would be before the General Assembly.

Some States have in fact adopted it; others have not. And now we are saying, well, it is really good competition, it is good productivity, but we do not want to adopt it; the States will just let the Federal government do this. That is where I run into this concern that I have.

I was listening to your testimony and going through it. You talked about the Bliss Company, you talked about GE, you talked early on about Goodrich and General Motors. And you talked about how they in fact have worked out a transition and how that has worked. They have done this without mandatory notification, without any kind of laws, without any kind of requirement.

Governor **Celeste**. That is right.

Senator **Quayle**. I can go in my State—International Harvester did a very good job in Fort Wayne, Indiana when they had to unfortunately close down. A lot of people were lost. They did a very good job of working and making sure that people got the transition.

Western Electric—a year, year and a half notification. We are now going through a very difficult one, and we are talking to them right now—Chrysler is looking at shutting down a plant in Indianapolis. But we have experiences in Indiana where we have in fact this early notification—and believe me, we want it. It is helpful. It is helpful to the economic development to have some certainty of what is going to happen. It is helpful to those people that are potentially going to lose their jobs to get early-on training.

And our Governor and Lieutenant Governor, as you have done, went in there early; you helped work in this transition.

So my point is that we ought to encourage this. It ought to be done. We have success stories of how it has been done.

My concern is come down to writing this as Federal legislation and mandating it. Let us not take GE or Goodrich or International Harvester or Western Electric. Let us take the case of a person, a small business, that employs several hundred people, and he is dependent upon, say, GE for a contract. Say it is auto parts supplies, and they make a certain auto part supply in that particular business. And all of a sudden General Motors says, "Sorry, the contract is up. We are just simply not going to do it"—for whatever reason. And that person had one contract that employed several hundred people.

Now, how is mandatory notification going to work in that situation? I mean, how, Governor, are they going to be able to give that——

Governor **Celeste**. How early does General Motors renew its contracts? I would submit, Mr. Chairman and Senator Quayle, that——.

Senator **Quayle**. How early does General Motors what?

Governor **Celeste**. Renew its contracts. I mean, they are negotiating contracts right now for 1990 and 1991. Let me go back to the issue of competitiveness in a global——

Senator **Metzenbaum**. May I just make an observation to my colleague? There is an exception in the bill for unforseen developments. And we have no problem about making that language as tight as necessary or as loose as necessary in order to cover the subject.

We are talking about planned plant closures, not when a sudden emergency comes up, and they cannot do anything about it.

Senator **Quayle**. I understand that, but I would think an unseen situation of losing a contract would not be unseen. I mean, that is a very distinct possibility.

You lose contracts from time to time, whether it is with General Motors, or say you are doing business with the Department of Defense or Department of Transportation, and all of a sudden you lose a particular contract; you just lose it—not three years out, but you lose it. You lose that contract. I do not see how in that particular case you are going to be able to give this mandatory notification. And there are some real liabilities that go along with not complying with the law.

Senator **Metzenbaum**. As the author of the bill I want to say if that is your main problem, we will work it out. We will work it out.

Senator **Quayle**. Oh, well——

Governor **Celeste**. If I may, Mr. Chairman, Senator Quayle, I would like to go back to the issue which I think is a valid issue and concern about why not enact this at the State level rather than at the Federal level. Let me draw a contrast for you.

The State of Ohio took the initiative and passed legislation to discourage certain conduct and unfriendly corporate takeovers. And we have done so very successfully. Now, interestingly enough, leadership in the private sector, business leadership, has come to Washington to say, let us do something like this at the Federal level; in other words, let us have a Federal standard to prevent dislocated managers, if you will. Let us have a Federal standard to set the groundrules for the whole country on what constitutes fair and appropriate takeover tactics.

It seems to me that there are certain places in which you need to define the economic arena as the nation as a whole. And when we talk about worker adjustment, it should in fact have a national standard, which is contemplated in this legislation, with a lot of flexibility for implementation.

I would frankly put in an incentive to encourage regional cooperation. The State of Ohio, working with Indiana, and four other Great Lakes States, is presently sharing through the job services, our respective employment services, is sharing resumés now on a six-State basis to encourage the movement of certain workers. That is what worker adjustment should involve, an enhanced support system and mobility that includes training, job search, all the way along the line. But it begins, it seems to me, before the plant closes. That is the point I would make. And if everybody worked with the same standard nationally, if everybody understood that it was the same standard nationally, Mayor Moran, when he is confronted with it, Governor Celeste, when he is confronted with it, Governor Orr, when he is confronted with it—we would be better off.

Senator **Quayle**. Governor, I do not dispute that as a general principle and as the standard of operation of corporate responsibility to the individual employees, to the communities and to the State, for reputation of future business ventures, that there should in fact be not only the notification, but when there is going to be a plant closing or a layoff, that you have this early intervention. And that is one of the things in Title I that I am strongly supportive of and we keep referring to, this readjustment assistance.

One of the things that I have said we need to do in Title III is to try and figure out how we are going to work earlier with those dislocated workers, because so often what happens—I know it happened in your State—and it is a difficult thing to look somebody in the eye and say, "Hey, do you know what? You are not going to be coming back, probably, to this place of employment." It was a tough thing to say. And it was difficult to say it, because what the tendency was was sort of, well, let us go ahead and just wait a little bit, and maybe I will get called back, maybe I will not—hopefully, they would. But early on, saying, hey, you know, we are in a changing society.

You said in your testimony, and I have made a number of speeches on it, that we are going to have people graduating from high school who are going to have three or four or five or six different jobs in a lifetime. Therefore, somebody that receives retraining or education in midlife, there should not be a mark on their employment record. That is part of our society today.

And what I see happening is that we are in fact moving in this direction. And I think there is really a lot of agreement and consensus on the readjustment assistance; but there really is not on how you are going to write this mandatory notification. And you even said you had some concerns about the consultation aspect of it.

Governor **Celeste**. Yes, Senator.

Senator **Quayle**. And that is where I come down in looking to help these people, particularly in the labor-management field. We have got a lot of areas of controversy. And you said, well, we should not ignore controversy; we ought to dig right in. Fine. On certain things, I agree. But you know, when you get down to some of the sensitive labor-management issues, what we really need to stress and emphasize are some of the things that we agree upon.

You know, business is going to have their agenda, labor is going to have their agenda, and at times they are going to collide. And we will take votes on it and we will pick up the pieces and march on as they always do.

But I really think in this situation that we ought to work very much on things that we can agree upon.

Senator **Metzenbaum**. I am going to have to interrupt my colleague. If I do not interrupt you, those who are most strongly concerned about and supporting his position are going to be precluded from being heard today. And I do not want to do that.

Senator **Quayle**. But I have got a lot of important points to make. Let me—I have got a couple of other questions here.

Senator **Metzenbaum**. But then you are going to have to sit here and hear the NAM and the Chamber of Commerce and the Committee for Economic Development, because the Chair must conclude this hearing by 12:30, and I do not want to cut you off, but I want you to understand that I am trying to be fair to all the witnesses.

Senator **Quayle**. Okay. I just think that these are some very important points that we ought to get out, and I think that we are having a good discussion. I can just tell you I am very concerned and very interested in parts of this bill.

Let me ask you, Governor, as far as the bill itself, if you had to choose between Title I or Title II, which is more important to you?

Governor **Celeste**. You see, I think that when we—Mr. Chairman and Senator Quayle, I understand the question—I believe that when we make the investment in Title I, which is an investment that benefits the companies who are closing, not just the workers, but the companies who are closing—we are entitled to expect Title II in return from them.

Senator **Quayle**. But the problem as I see it—and maybe, as the Chairman says, well, if that is your concern, I have got a number of concerns, and maybe they can be worked out—if they can, fine—but if they cannot, then what I am afraid is going to happen is that we are going to get this Title I, which is the readjustment assistance, which we all strongly support, and I do not think there is that much controversy on it—as a matter of fact, I think it can be dealt with, I think it can be moved out fairly quickly—but if we are going to tag on the mandatory notification, I just look at some political predicaments that we might find ourselves in. Instead of getting early action on Title I, it may be slowed down, and I do not think that is going to help anybody. That is why I am just trying to get a sense from you if there is a priority.

I know you are here to testify for the bill, and you want to support your Senator from Ohio, but I just wonder if you might be able to sort of talk about priorities and, sitting from this viewpoint, where you might suggest that we go.

Senator **Metzenbaum**. Senator Quayle, I am going to let the Governor answer that, but then I am going to have to go forward at that point.

Senator **Quayle**. Well, I——

Governor **Celeste**. Mr. Chairman and Senator Quayle, I would prefer to stumble along with what we have got. If we are going to take a step forward toward a comprehensive program, then I believe mandatory notification ought to be part of that. And I would be happy to spend time here in Washington, working with business leaders, working with concerned Members of the Senate who may have questions about this, as well as the sponsors, as to how we could come up with a mandatory notification program that really works from a business standpoint. I think it can be done.

Senator **Metzenbaum**. Thank you very much, Governor Celeste and Mayor Moran.

Senator **Quayle**. Wait a second. I have a couple of other questions.

Senator **Metzenbaum**. Senator Quayle, I appreciate it, and I am happy to have you submit them in writing, but as one who understands the filibuster procedure, I am not going to let that go on in this Committee. [Laughter.]

Senator **Quayle**. Well, I do not think it is a filibuster. The witnesses are here——

Senator **Metzenbaum**. I understand.

Senator **Quayle**. You can turn to Senator Harkin, and maybe we can get a second round. I have only got a couple other questions.

Senator **Metzenbaum**. Well, Senator Quayle, it is now 11:15. We have been with this panel since 10:00 including our opening statements, and I am just going to have to say that if you have additional questions, submit them to them in writing.

Thank you, Governor——

Senator **Quayle**. Do you mean you are really going to just cut off the opportunity to ask the Governor and the Mayor? I have not even gotten around to asking the Mayor.

Senator **Metzenbaum**. I am not going to let this day conclude and have the NAM and the Chamber of Commerce and the Committee for Economic Development be precluded from having an opportunity to be heard.

I just think that there is an element of fairness about it. Many times, we have had witnesses where we submit questions to them, so yes, indeed, I am going to conclude this panel and go on to the next witness.

Senator **Quayle**. This is the "mandatory notification" that we have been talking about.

Senator **Metzenbaum**. No. This is consultation. [Laughter.]

Senator **Quayle**. I would only say, you have got the gavel, but I think this is highly irregular that a Senator would be denied asking questions of the witnesses.

Senator **Metzenbaum**. Well, if you have two more questions, Senator Quayle.

Senator **Quayle**. I have one more for the Governor, and I have two for the Mayor.

Senator **Metzenbaum**. Well, I think you can understand. I do not want to cut you off, but I do want to keep this hearing moving. If you can answer them shortly, go ahead and do it, and let us get it over with.

Senator **Quayle**. I do not think that my questions have been off-the-subject. I think that they have been——

Senator **Metzenbaum**. I am not accusing you of bad faith. I am just saying to you, you have been the Chairman of this Subcommittee, you understand the problems, and therefore I am trying to let you understand that we have a number of people here, some of whom are from out of the State, out of the City, and I just want to keep it rolling. So if you can do it promptly, I have no problem.

Senator **Quayle**. Senator Harkin, do you want to ask a couple questions?

Senator **Harkin**. Mr. Chairman, I am just sorry I came here late. I wanted to hear the testimony of Governor Celeste and Mayor Moran, Governor Celeste because he is an old friend, and Mayor Moran because he is the Mayor of the City in which I happen to live right now. I will look forward to reading their testimony, and I apologize for being late. I have no other questions.

Senator **Quayle**. One other question for the Governor.

In your testimony you talked about one of the unions that had negotiated, I think, for prior notification in the contract. This is a collective bargaining issue, is it not?

Governor **Celeste**. It may be, but I do not think it has to be.

Senator **Quayle**. Well, it can be.

Governor **Celeste**. It can be.

Senator **Quayle**. Are you aware of this being an issue in some of the collective bargaining?

Governor **Celeste**. Yes.

Senator **Quayle**. It is.

Governor **Celeste**. Absolutely.

Senator **Quayle**. And so if we would say that you have to bargain about it, we are in fact getting into the collective bargaining process, are we not?

Governor **Celeste**. It is true that a number of things that are occupational safety are also the subject of collective bargaining.

Senator **Quayle**. But this is in your State—I think it is in your testimony that this is an issue of collective bargaining.

Governor **Celeste**. In some cases, yes.

Senator **Quayle**. Okay. Mayor Moran, who is the largest employer in your City—the Federal Government, I presume?

Mayor **Moran**. Cameron Station; the Federal Government.

Senator **Quayle**. Can you give me some examples in your City of where you have had difficulties with business closings that have caused serious worker dislocation, in the City of Alexandria?

Mayor **Moran**. I want to emphasize, I am representing the Conference of Mayors and also a City that is blessed with being part of a metropolitan area that is in fact growing. But we recognize this as a national problem.

We have had some situations where workers have been laid off, and we have been able to work with the Chamber of Commerce in finding other employment. In fact, we subsidized the Chamber of Commerce's Economic Development Program.

Senator **Quayle**. So you do not have any specific examples in the City of Alexandria where this plant closing has become a serious problem on worker dislocation?

Mayor **Moran**. We are primarily a service sector economy.

Senator **Quayle**. So you personally have not had this problem.

Mayor **Moran**. Nowhere near the extent that Governor Celeste's constituents have.

Senator **Quayle**. Well, have you had a problem? Do you have any examples of where you have had lack of notice of a major employer in your city that has not given notice and just shut down a plant?

Mayor **Moran**. No.

Senator **Quayle**. Thank you.

Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you, Senator Quayle.

I thank the panel very much.

Ms. Waxman, would it be possible for the Conference of Mayors to poll all of the Mayors of this country with respect to the matter of notice as well as consultation?

Ms. **Waxman**. Yes, Senator. We will be having our annual meeting in June, and at that time I am sure that the issue could be resolved.

Senator **Metzenbaum**. We hope to move it prior to that. If you could poll them by mail, we would appreciate it.

Ms. **Waxman**. Okay.

Senator **Metzenbaum**. Thank you.

Our next witness is Thomas R. Donahue, Secretary-Treasury of the AFL-CIO.

Mr. Donahue, I think you heard previously we do have a five-minute rule, and since time is rolling, I am going to adhere to it very strictly at this point.

Would you be good enough to identify those who are with you at the table?

STATEMENT OF THOMAS R. DONAHUE, SECRETARY-TREASURER, AFL-CIO, WASHINGTON, DC, ACCOMPANIED BY BOB McGLOTTEN, DIRECTOR, LEGISLATIVE DEPARTMENT; AND MARKLEY ROBERTS, ECONOMIC AFFAIRS DEPARTMENT

Mr. **Donahue**. Yes, I would, Senator.

I am accompanied by Bob McGlotten on my left, Director of our Legislative Department at the AFL-CIO; and Markley Roberts of our Economic Affairs Department, on my right.

Mr. Chairman, Senator Quayle, on behalf of the AFL-CIO, its affiliated unions, and their 13 million members, we thank you for the opportunity to express our support for S. 538, legislation sponsored by you and other members of this Committee.

Plant closings and mass layoffs strip over 3 million workers of their jobs every year, with tragic consequences to the dislocated worker, for their families and for their communities.

The Economic Dislocation and Worker Adjustment Assistance Bill represents a big step forward in what we hope will be a concerted effort to alleviate the human costs of that economic change.

This morning, Mr. Chairman, we would like to offer a brief statement, with an expected primary focus on advance notice and consultation, and with your permission, submit more detailed testimony for the record.

Senator **Metzenbaum**. Without objection, your entire statement will be included in the record.

Senator **Quayle**. Mr. Chairman, could I just make one point. In the future, could we please—I know it is difficult—but could we please try to get the testimony a day in advance? We did not get this—at least, we did not get it—until 6 last night, because I asked my staff yesterday afternoon what the testimony was going to be of Mr. Donahue, and we just did not have it.

So I hope that maybe in the future, we might be able to get it a day in advance. I know sometimes people have problems, particularly out-of-State and out-of-town witnesses. But it sure would be helpful to us and to me if you could do that.

Senator **Metzenbaum**. I would agree with the Senator. Our rules are that we want the testimony 24 hours in advance; sometimes we vary that; we do not make it an absolute. But where it is possible, we would appreciate your cooperation. It just makes it easier for us to prepare for the testimony.

Mr. **Donahue**. We will certainly try to be responsive, Senator, and apologize for the delay in getting this testimony to you.

Senator **Metzenbaum**. Well, I think it was in yesterday late afternoon, as I understand it.

Mr. **Donahue**. That is right, Senator.

Senator **Metzenbaum**. So we had some advance notice.

Mr. **Donahue**. As you probably know, Senator, we are working short-handed. President Kirkland is in the hospital, and I have been doing double-duty on a number of subjects, and that is part of the reason for the delay.

I would hope that that colloquy does not come out of our five minutes, Senator.

Senator **Metzenbaum**. It will not, it will not.

Mr. **Donahue**. Our Labor Institute of Public Affairs, our television arm, recently made a film about workers dislocated when a Bethlehem Steel mill closed in East Los Angeles, entitled "Expectations". It is the story of the workers and of the food bank and the job placement services that they created themselves.

One of the stories that the film tells is a story about Mel Clark. Mel Clark is a 44 year-old woman in East Los Angeles who spent ten years as a bricklayer in a Bethlehem Steel mill before it closed. Her 17 year-old daughter, a senior in high school, ranks in the top ten of her class. Until the mill closed, she could look forward to a substantial higher education.

Now, with her mother making less than half of her Bethlehem wages, that future is in doubt. And yet, Mel Clark is one of the lucky ones, because she found another job.

The average length of joblessness among dislocated workers is six months. One in five dislocated workers remains jobless for more than two years. Those who find work have to settle for wages 16 percent lower than in their previous jobs.

Workers who are forced to switch occupations or industries to find new jobs lose 30 percent of their earnings.

It is a mistake to see this as a simply regional or State problem. In fact, the highest rates of worker dislocation from plant closings in the period 1981-1985 are in the East South Central and West South Central States. The lowest rates, though some very high numbers, appear in the so-called "rust belt" States of the Northeast and Midwest. Those regional dislocation rates appear as an index to our testimony.

Employers are currently under no legal obligation to notify employees of plant closings or mass layoffs in advance. As a result, two-thirds of the workers facing plant closings get less than two weeks advance notice. One-third get no notice at all. The average non-union worker gets two days notice; the situation for white-collar workers is only slightly better.

In our view, the key to addressing the problems of plant closings or mass layoffs is a provision such as that in S. 538, requiring an employer to provide advance notice of the proposed closing and to consult in good faith with both Government authorities and the representatives of the employees.

It seems to us that they are two related issues. One is going what we can to prevent those closings and layoffs; the other is limiting the human suffering and the damage to families and communities that inevitably results when a plant is shut and people lose their jobs.

Advance notice and consultation will at least assure that every alternative will be explored. State and local governments currently and routinely develop all sorts of incentives to attract new businesses. The notice of closing would give that State the opportunity to come forward with a package of assistance that might enable an existing employer to continue operating.

Or, the employees themselves develop ways to save the business by suggesting new operating methods, new cost-saving approaches, or even in the extreme, by purchasing the plant through an employee stock ownership plan.

The point is that advance notice and consultation may lead to a solution that the employer has not considered, or one the employer wrongly assumed to be impractical.

The burden of notice and consultation on employers would be minimal, would be more than outweighed by the damage that may be avoided. There is no evidence that advance notice is harmful to employers. There is some that it actually increases productivity.

The evidence is that many American corporations operate abroad quite successfully under foreign laws which require advance notice of plant closings and major layoffs.

That having been said, we fully recognize that consultation will not always avert a closing or a layoff. In a world in which economic changes are constant, closings and relocations are to a degree inevitable. In some instances, workers and their communities are going to decide that keeping a plant open is simply not feasible. We have wisely declined invitations to become partners in losing propositions before and undoubtedly will again.

But even if advance notice and consultations help save just 10 percent of the jobs lost every year through closings and layoffs, we would still be saving 300,000 jobs annually.

As a number of experts have observed, the process of notice and consultation is valuable in and of itself, and it is a concrete example of the labor-management cooperation that everybody says they want, or to which every competitive proponent at least pays homage.

If a plant cannot be kept open, advance notice gives people the opportunity to cushion the shock. The Task Force the Secretary of Labor appointed noted that, "An essential component of a successful adjustment program is the advance notice." Workers can begin to look for new jobs, can make arrangements for their families, deal with the psychological stress before they are actually out of work.

The value of a rapid-response unit has been already proven in Canada. The Administration has endorsed the concept. But it can only work with the requirement for advance notice. The Canadian experience is that the average duration of unemployment for those receiving assistance was seven and a half weeks, compared to twenty-two weeks for the regular unemployment insurance recipients.

Mr. Chairman, we support S. 538 on this issue, and on the issues of notice and consultation. We think the bill represents a good, sound approach to meeting employment and training needs.

We have substantial objections to some of the Administration proposals and the legislation the Administration has advanced, and we think it is a bad idea to pass too many more responsibilities along to States without funding; yet we are encouraged to see that the Administration proposals on the subject recognize the need for helping the victims of economic change.

We welcome the authorization of training money. We are concerned about the mix of the $980 million which the Administration has advanced. We support the inclusion of the $980 million here, but would express concern about including trade adjustment assistance in the $980 million provided in S. 538.

I think, Mr. Chairman, I should stop there, since I see your red light, and offer to try to answer whatever questions you might have and to note that we have tried in our longer testimony to address a number of the questions that the bill addresses beyond the advance notice and consultation features.

[The prepared and supplemental statements of Mr. Donahue with attachments follow:]

87-08

Statement by Thomas R. Donahue, Secretary-Treasurer American Federation of Labor and Congress of Industrial Organizations to the Subcommittee on Labor and the Subcommittee on Employment and Productivity of the Senate Committee on Labor and Human Resources on S. 538, the Economic Dislocation & Worker Adjustment Assistance Act

March 10, 1987

Mr. Chairman, members of the Subcommittee, on behalf of the AFL-CIO, its affiliated unions, and their 13 million members, I thank you for this opportunity to express our support for S. 538, the legislation sponsored by you and other members of the Committee on Labor and Human Resources. Plant closings and mass layoffs strip three million workers of their jobs every year--with tragic consequences for the dislocated workers, their families and for their communities. "The Economic Dislocation and Worker Adjustment Assistance Bill" represents a big step forward in what we hope will be a concerted effort to alleviate the human costs of this economic change.

This morning, I would like to read a brief statement, and with your permission submit more detailed testimony on specific proposals for the record.

Mel Clark is a 44-year old woman in East Los Angeles who spent ten years laying bricks in a furnace at a Bethlehem steel mill before it closed. Her 17-year old daughter, a senior in high school, ranks in the top ten of her class. Until the mill closed, she could look forward to higher education; but now, with her mother making half of her Bethlehem wages as an apprentice carpenter, her future is in doubt. And yet, Mel Clark is one of the lucky ones--she found another job.

The average length of joblessness among dislocated workers is six months. One in five dislocated workers remains jobless for more than two years. Those who do find work have to settle for wages 16 percent lower than in their previous jobs. Workers forced to switch occupations or industries to find new jobs lose 30 percent of their earnings.

These are not simply regional problems. In fact, the highest rates of worker dislocation from plant closings, in the period 1981-85, are in the East South Central and West South Central states; the lowest rates are in the so-called "rust belt" states of the Northeast and Midwest. The regional dislocation rates appear in an appendix to our testimony.

Employers are under no legal obligation to notify employees of plant closings or mass layoffs in advance. As a result, two-thirds of the workers facing plant closings get less than two weeks advance notice. One-third get no notice at all. The average non-union worker gets two days notice, and the situation for white-collar workers is only a little better.

In our view, the key to addressing the problems of plant closings or mass layoffs is a provision, such as the one in S. 538, requiring an employer to provide advance notice of a proposed closing and to consult in good faith with both government authorities and the representative of the employees.

There are two related issues involved here. One is doing what we can to prevent closings and layoffs. The other is limiting the human suffering and damage to families and communities that inevitably results when a plant is shut and people lose their jobs.

Advance notice and consultation will at least assure that every alternative to closings and layoffs will be explored. State and local governments currently and routinely develop incentives to attract new businesses. The notice of a closing may induce state or local governments to come forward with a package of assistance that may enable an employer to continue operating. Or employees may develop ways to save the business by suggesting new operating methods, new cost-saving approaches, or even, in the extreme, by purchasing the plant through an employee stock ownership plan or a similar device. The point is that advance notice and consultation may lead to a solution the employer has not considered, or one the employer wrongly assumed to be impractical.

The burden of notice and consultation on employers would be minimal and more than outweighed by the damage that may be avoided. There is no evidence that advance notice is harmful to employers. There is some evidence that it actually increases productivity. Indeed, many American corporations operate abroad under foreign laws requiring advance notice of plant closings and major layoffs.

That having been said, we fully recognize that consultation will not always avert a closing or mass layoff. In a world in which economic change is a constant, closings and relocations are to a degree inevitable.

In some instances, workers and their communities will decide that keeping a plant open is not feasible. We have wisely declined invitations to become partners in losing propositions before. But even if advance notice and consultation helped save just 10 percent of the jobs lost every year through closings and mass layoffs, we would still be saving 300,000 jobs annually.

As a number of experts have observed, the process of notice and consultation is valuable in and of itself, regardless of its worth in solving problems or averting a crisis. Advance notice is a concrete example of the labor-management cooperation everyone wants, or to which every competitiveness proponent at least pays homage.

If a plant cannot be kept open, advance notice gives people a greater opportunity to cushion the shock. As the task force appointed by the Secretary of Labor concluded in its January 1987 report, adequate advance notice is, and I quote, "an essential component of a successful adjustment program."

With advance notice, workers can begin to look for new jobs, to make arrangements for their families, to deal with the psychological stress--before they are actually out of work. With advance notice, the appropriate government agencies can start their assistance efforts before a closing or layoff. The value of a rapid-response unit has been proven in Canada, and the Reagan Administration has endorsed the concept. But it can only work with a requirement for advance notice which triggers the adjustment efforts. In Canada, the average duration of unemployment for those receiving assistance was 7-1/2 weeks, compared to 22 weeks for regular unemployment insurance recipients.

We support the provisions in S. 538 on this issue, specifically those relating to the timing of advance notice, to the provision of relevant information so that alternatives can be explored, and to the penalties for employers who fail to meet these basic obligations.

Mr. Chairman, we believe the legislation you have proposed is a good, sound approach to meeting the employment and training needs of workers hit by plant closings and major layoffs, and we give it our wholehearted endorsement.

At the same time, while we have substantial objections to the Administration's proposals to collapse training, employment service, trade adjustment and unemployment assistance programs, and to pass more of those responsibilities along to the states, we are encouraged to see that the Administration proposals recognize the need for helping the victims of economic change.

We strongly welcome the authorization in S. 538 of $980 million to provide services and support to dislocated workers, although we estimate that even this amount is far less than what is needed. And while the Administration is talking of a similar amount, it is proposing the termination of Trade Adjustment Assistance, and we are opposed to that. We likewise support the establishment of a Dislocated Worker Unit in the Labor Department, although we believe the functioning of that unit would be greatly aided by following the recommendation of the Secretary of Labor's task force and establishing a federal tripartite advisory committee, composed equally of representatives of business, labor and the general public, to "review program performance against the objective [of] quality re-employment and make recommendations for improvement." And we favor the authorization of discretionary monies to the Secretary of Labor to fund demonstration programs, although we believe that the proportion of funds available for these demonstration programs is too low and that some of the specifics of the proposed public works employment demonstration program are troublesome. These provisions go hand in hand with the notice and consultation provisions of Title II in forming a comprehensive response to the problem of plant closings and mass layoffs.

The workers we represent are hopeful that you will take prompt action in this area, and we appreciate the leadership and support you have given them.

Mr. Chairman, as I noted, we are submitting for the record a more detailed statement along with the AFL-CIO Executive Council statement on plant closing legislation.

I am happy to answer any of your questions.

87-08

Supplementary Statement by Thomas R. Donahue, Secretary-Treasurer American Federation of Labor and Congress of Industrial Organizations, to the Subcommittee on Labor and the Subcommittee on Employment and Productivity of the Senate Committee on Labor and Human Resources on S.538, the Economic Dislocation and Worker Adjustment Assistance Act

March 10, 1987

Mr. Chairman, we appreciate this opportunity to present the support of the AFL-CIO for S.538, the plant closing bill sponsored by you and by other members of the Senate Committee on Labor and Human Resources. We appreciate the leadership and support that have come from you and from the co-sponsors of this legislation. Plant closings and mass layoffs inflict profound injuries on the workers who lose jobs, their families, their communities, and our whole society.

Your bill, the proposed "Economic Dislocation and Worker Adjustment Assistance Act," which provides for advance notice, consultation and adjustment services, provides the basis for an important step forward by the United States Congress to do whatever can be done to prevent plant closings and major layoffs from occurring, to minimize the human costs of economic change and to cushion the process of adjustment for workers and local communities adversely affected by plant closings and major layoffs.

Plant closings and mass layoffs strip three million workers of their jobs every year, with tragic consequences for the dislocated workers, their families and their local communities.

The manufacturing sector of the economy has been especially hard hit by plant closings and mass layoffs, contributing to the deindustrialization of the American economy and reflecting the destructive impact of corporate investment policies and federal fiscal, monetary and trade practices.

The heavy toll on dislocated workers includes:

- Joblessness averaging six months, with more than one-fifth of all dislocated workers remaining jobless for more than two years;

- an average wage reduction of 16 percent, with earnings losses of 30 percent for those required to switch occupations or industries to find new jobs.

Plant closings and major layoffs are a national problem -- not simply a regional problem. In fact, the highest rates of worker dislocation from plant closing from 1981 to 1985 are in the East South Central and West South Central states and the lowest dislocation rates are in the Northeast and Midwest so-called "rust belt" states. The regional dislocation rates appear in an appendix to this testimony.

In many situations, the injuries suffered by workers and their communities could be ameliorated, or avoided altogether, by timely government or private intervention. Some contemplated plant closings and mass layoffs are preventable. Indeed, less than 10 percent of plant closings are due to bankruptcy or financial insolvency. And where a closing cannot be prevented, its disruptive effects can be minimized by a variety of readjustment measures.

Under decisions of the Supreme Court and the National Labor Relations Board, most plant closing decisions are not mandatory subjects of bargaining. This means that employers are free to bypass the collective bargaining process in making decisions on this most vital of matters, foreclosing the opportunity to search for constructive alternatives to a contemplated closing. Employers likewise have no legal obligation to provide advance notice to employees of plant closing or mass layoff decisions.

Most workers do not now get sufficient advance notice of decisions on plant closings or major layoffs. Two-thirds of blue-collar workers facing plant closings receive less than two weeks advance notice and one-third receive no notice at all. The average non-union worker gets two days notice. The situation is a little better for white-collar workers.

The task force on plant closing and worker adjustment appointed by the Secretary of Labor concluded in its January 1987 report that: adequate advance notice is "an essential component of a successful adjustment program;" there is no evidence to support business fears regarding notice; and serious problems of worker adjustment now occur because corporate management rarely gives adequate advance notice.

The United States government has a responsibility to protect American workers and local communities from the devastating consequences of plant shutdowns and mass layoffs. In Canada, where advance notice is required, an industrial adjustment service of the federal government has been effective in working with labor and management to cope with plant closing and worker adjustment problems.

Many American corporations are operating abroad under foreign laws which require advance notice of plant closings and major layoffs. Such laws exist in Canada, Sweden, France, West Germany, the United Kingdom, and Japan. In this country there are a few labor-management contracts which call for advance notice.

There is no evidence that giving advance notice is harmful to the employer. Contrary to widespread mythology, notice does not lead to lower productivity and may even raise it.

The AFL-CIO Executive Council last month called for immediate passage of federal plant closing legislation that provides:

- Mandatory advance notice of contemplated plant closings and mass layoffs, accompanied by disclosure of all relevant information pertaining to the reasons for and basis of the contemplated action and possible alternatives to such action.
- Consultation with labor and the community and access to government technical assistance, to explore alternatives to closing and to plan assistance for workers and communities where a closing cannot be prevented.
- Compensation in the form of mandatory severance pay to workers who do not receive advance notice or whose union is not offered an opportunity for consultation with respect to a contemplated closing or mass layoff decision.
- An industrial assistance program on the Canadian model to provide rapid-response, plant-specific assistance for dislocated workers, including job training with adequate income support during training; education and relocation assistance; and employment service assistance for job-related counseling, job placement and job search.

Support Advance Notice and Consultation

In light of the profound injuries to workers, communities, and the whole society resulting from plant closing and mass layoffs, the first task of public policy in this area must be to do whatever can be done to prevent closings and layoffs from occurring. Accordingly, the first requisite of any bill that seeks to address the problem of plant closings and mass layoffs is a requirement, such as that contained in Title II of S.538, that an employer provide advance notice of a proposed closing or layoff and consult in good faith with the affected governmental authorities and with the representative of the affected employees concerning the proposed action.

Requiring advance notice and consultation assures that before an employer makes a final and irrevocable decision to close a plant or to effect a mass layoff, all relevant considerations will have been presented to the employer for his evaluation and all alternatives to the contemplated action will have been fully explored. In the world of industrial relations, as in the world of politics and in life generally, the reality of an impending crisis focuses the mind in a way in which mere possibilities and threats do not. When a crisis is clearly at hand -- and notice of a proposed plant closing or mass layoff would surely constitute a crisis for the workers to be affected -- parties with otherwise conflicting interests are not infrequently able to transcend their conflicts and together develop solutions to their joint problem.

In the plant closing context, for example, notice of a threatened closing may induce local or state governments -- which are accustomed to developing incentives to attract new businesses -- to come forward with a package of assistance that may enable the existing employer to continue operations. Alternatively, through notice and consultation, the employees may develop methods of saving the business by reducing costs and/or improving productivity, or even by purchasing the plant through an employee stock ownership plan or other similar device. In sum, through notice and consultation, solutions may be developed which did not occur to the employer in making a preliminary decision to close, or which the employer had wrongly assumed to be unobtainable.

In order to assure that the process of consultation works effectively and to maximize the possiblity that through consultation plant closings can be prevented, S.538 wisely requires an employer contemplating a closing or layoff to provide "such relevant information as is necessary for the thorough evaluation of the proposal to order a plant closing or mass layoff or for the thorough evaluation of any alternatives or modifications suggested to such proposal." Without adequate information it is not possible for unions or for governments to fashion realistic proposals to address the employer's needs.

We recognize, of course, that in many situations, consultation will not be able to avert a closing or mass layoff; in a world in which economic change is a constant, closings, relocations, and the like will always be occuring. But even if the notice and consultation provisions were able to prevent only a small portion of contemplated closings and mass layoffs, those provisions -- which impose the most minimal of burdens on employers -- would be amply justified by the injuries that would be avoided.

Moreover, as Professor B. Glenn George has observed, the process of notice and consultation "has value for labor-management relations irrespective of any resolution and problem-solving function it typically services." Allowing employees an opportunity, through their representative, to discuss the reasons for and participate in a closing or layoff decision "must inevitably increase the likelihood that the employees will understand...such management decisions" and thereby "diffus(e) the sense of unfairness and abuse that employees facing the consequences of unemployment undoubtedly feel." The resulting "enhancement of mutual respect and a sense of fairness and due process" that will result from the consultative process thus provides an independent justification for requiring advance notice and consultation with respect to decisions that will profoundly affect large groups of workers.

Finally, the advance notice requirement of S.538 is essential for yet a third reason: as the task force appcinted by the Secretary of labor concluded in its January 1987 report, adequate advance notice is "an essential component of a successful adjustment program."

Where a plant closing or mass layoff cannot be prevented, it is the obligation of government to assist the affected workers in readjusting and thereby minimizing the injuries inflicted by the closing or layoff. But the process of readjustment, by definition, cannot begin until the workers are notified that their employment will be terminated. With advance notice, a worker has some opportunity to begin the process of adjustment -- to look for a new job, to make arrangements for the worker's family, to deal with the psychic stress -- before the worker is actually out of work. And with advance notice, the government can commence its readjustment assistance efforts before large numbers of workers have been thrown out of work. Indeed, the concept of a rapid-response unit -- a concept whose value has been proven in Canada and which the Reagan Administration has endorsed -- is hollow without some requirement of advance notice to trigger that unit's efforts.

In Canada, where advance notice is required, the average duration of unemployment for displaced workers getting rapid-response assistance was 7½ weeks, whereas regular unemployed workers getting unemployment compensation without rapid-response help were out of work an average of 22 weeks.

The AFL-CIO thus endorses the provisions of Title II of S.538 as necessary both to prevent avoidable closings and to minimize the injuries resulting from unavoidable closings. We support Title II's concept of relating the length of the advance notice requirement to the number of workers to be affected, because we believe more extensive consultation is called for, and more time needed for readjustment, when large numbers of workers are to be affected by a closing than when smaller number of persons are affected. In our view, the notice requirements in Title II -- which range from 90 days where 50-100 workers are involved to 180 days where more than 500 workers are involved -- are minimal requirements, and we endorse these provisions of the bill.

We likewise support the inclusion in the bill of reasonable penalties for employers who fail to provide the advance notice required by the bill or who fail to engage in good-faith consultation. These penalty provisions are carefully tailored to the harm that will result if an employer violates the requirements contained in Title II, as the penalties provide the affected workers and governments with a minimal amount of compensation if they are not provided with the advance notice and the opportunity to consult to which they are entitled under the bill.

$980 Million

We welcome the authorization in S. 538 for $980 million to provide services and support to dislocated workers. This is a substantial and necessary increase over the inadequate funds which have been available for these purposes under Title III of the Job Training Partnership Act of 1982, although we estimate that it is less than a third of the amount needed. However, it is a significant step in the right direction.

The Reagan Administration's proposed worker readjustment program has its faults -- and we consider S.538 a better and preferable approach to dealing with plant closings, major layoffs, and worker readjustment assistance -- but we note that the Administration recognized the problems, proposed a $980 million program to deal with these problems, and called for "rapid response units" to deal with these problems. However, we strongly believe that the $980 million should be new money. We want new money -- not money stolen from Trade Adjustment Assistance and vocational education. We oppose the dismantling of TAA and vocational education as proposed by the Administration.

Tripartite Committee

We strongly urge this Committee to incorporate in S.538 the substance of the recommendation of the Secretary of Labor's task force which called for a federal tripartite advisory committee on plant closings and worker adjustment. Here is what the task force said:

"A federal tripartite advisory committee would be established, composed of business, labor and the public, which would act as a mechanism to review program performance against the objective -- quality re-employment -- and make recommendations for improvement."

We think the Administration deserves credit for proposing such a national Worker Readjustment Advisory Council to be appointed by the Secretary (Section 1254). However, we must quickly qualify this credit because the Administration's advisory council -- instead of being a genuine tripartite group -- would be 50 percent business, 25 percent labor, 25 percent public officials, and a business representative would always be chairman. We urge you to include a genuinely tripartite federal advisory committee in S.538.

We welcome the requirement in S.538 that state governors set up tripartite advisory committees to advise the governor and the state dislocated worker unit on administration of programs to help dislocated workers in that state and to review state worker readjustment assistance plans.

This is a good requirement at the state level and it is highly desirable at the national level. A national tripartite committee would help the Secretary of Labor and the Dislocated Worker Unit in the Labor Department operate more effectively in carrying out their responsibilities under this legislation.

This principle of involving the people directly concerned to make the system work better is sound, and therefore we also endorse the requirement of Section 107(b)(2) of S.538 that the Secretary of Labor set a standard to encourage establishment of joint worker-management adjustment committees at each plant closing or major permanent layoff to coordinate readjustment services to displaced workers, including helping them find new jobs or training opportunities. We support the requirement for an impartial, non-affiliated chairman and an ex-officio government member of these committees.

Strong Federal Role

It is essential for the U.S. Department of Labor to demonstrate leadership and provide effective guidance to the states in administering these programs. We welcome the proposal in S.538 for a Dislocated Worker Unit in the Labor Department to administer and to supervise "rapid response" worker adjustment assistance programs in the states and at the national level. We generally support the approach taken to "State Delivery of Dislocated Worker Services" in Section 105 of S.538, including labor standards and state-wide tripartite advisory committees.

We also want to give credit to the Administration bill for raising the issue of joint labor-management committees in the states (Section 1206), although we prefer the approach taken in S.538. We note the Administration proposes that substate plans must include the means for assisting in the establishment of labor-management committees and the means for involving labor organizations in development and implementation of services (Section 1209). We also appreciate the Administration's concern for labor standards (Section 1216) and for labor consultation (Sections 1217 and 1253, for example).

States must be required to provide a high level of detail in their plans relating to those workers to be served, the kinds of services provided to them and the designated program operators, so that the Secretary of Labor can effectively review these plans. At the same time states should be given the flexibility to select program operators on the basis of demonstrated effectiveness rather than predetermined status in the JTPA system.

Organizations such as the AFL-CIO Human Resources Development Institute, the National Alliance of Business, and Project 70001, which have extensive experience in designing and operating displaced worker programs should be fully utilized by the Department of Labor.

We would also like to see strengthened provisions in the law relating to public review and comment, complaint procedures, as well as consultation with organized labor when union members are affected by these programs.

We commend your commitment to providing income support for workers who have exhausted other benefits so that they may enroll in longer-term training, and we again urge that the Department of Labor take a strong role in making sure that the states provide this necessary income support.

Discretionary Funds

Title III of S.538 provides for demonstration programs to be funded from the discretionary money available to the Secretary under this legislation. We welcome the low-interest training loan demonstration program to supplement existing training programs. We also welcome the concept of the proposed public works employment demonstration programs -- but we believe the wage standards set in Section 335(a) are excessively restrictive and should be raised. Also we urge that the permissive language in Section 337(b) be changed to mandatory language so that the Secretary of Labor is required to prescribe labor standards based upon Section 143 of the Job Training Partnership Act.

We recognize that 30 percent of funds appropriated under this legislation will be reserved for Title III demonstration, exemplary, and discretionary programs designed to increase employability of dislocated workers. We support the specific reservation of not less than 50 percent of these funds for the Secretary of Labor's discretionary and exemplary programs.

Oppose Defederalization

We are deeply concerned about the crisis in the nation's unemployment insurance system which now provides benefits to only one-third of America's jobless. the long-term jobless -- including many dislocated workers -- are virtually unprotected by the extended UI benefit program that was supposed to help them. We object to the Administration's proposal, included in the competitiveness package, to defederalize the funding of the costs of administering unemployment insurance and job service programs. Putting this additional cost burden on the states will result in additional cutbacks in services which are essential to adjustment assistance for dislocated workers.

We object to the further decentralization of these programs as proposed in the Administration's worker readjustment bill and we object to the inadequately comprehensive income support necessary for workers to receive long-term training. S.538 is much closer to meeting workers' needs.

Trade Adjustment Assistance

We have examined the Reagan Administration's proposal to set up a new worker readjustment program as one part of the Administration's so-called competitiveness initiative. We strongly oppose the Administration's call for eliminating Trade Adjustment Assistance by folding it into the new worker readjustment assistance program. The Secretary of Labor's task force did not recommend elimination of TAA.

The AFL-CIO is supporting legislation to expand Trade Adjustment Assistance both in coverage and scope, financed by an import surcharge, to help those workers harmed by trade. We will continue to oppose any effort to kill TAA or fold it into plant closing worker adjustment assistance legislation.

Trade Adjustment Assistance is a key part of a social compact by which the labor movement was enlisted in support of national trade policy in 1962 and again in 1974. The promise of TAA was and is to offset losses to workers resulting from national trade policy. In theory, although not in reality, TAA could include up to a year of income support, up to two years of training, extended job search assistance, and family relocation assistance.

We recognize that current TAA funding is now totally inadequate, but we urge that this program continue and we want to see it funded at a level sufficient to deal with the problems of import-injured workers and communities and industries.

In conclusion, Mr. Chairman, I repeat the strong endorsement of the AFL-CIO for S.538. We believe this bill is a good, sound approach to meet the employment and training needs of workers hit by plant closings and major layoffs.

We urge prompt, favorable action on S.538 by this Committee and by the Congress. Thank you.

Appendix

Regional Dislocation and Rates of Dislocation, 1981-1985

BLS Region***	Worker Dislocation* Plant Closings (000)	Worker Dislocation* Total (000)	Rate of Dislocation** Plant Closings	Rate of Dislocation** Total
New England	246	454	4.5%	8.2%
Middle Atlantic	695	1,411	4.7	9.6
East North Central	950	2,185	5.8	13.3
West North Central	396	865	5.4	11.8
South Atlantic	790	1,603	5.0	10.2
East South Central	367	763	6.6	13.7
West South Central	681	1,525	6.6	14.7
Mountain	327	701	6.5	13.8
Pacific	774	1,703	5.6	12.3
Total	5,224	11,210	5.5	11.8

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* Dislocation is all workers (aged 20+) permanently dislocated because of a plant closing or because of a position or shift being abolished, slack work or self-employed business failure.

** Rate calculated as number of adult workers dislocated between 1981 to 1985 per adult employee in state or region in 1983.

*** Regions are: New England (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut); Middle Atlantic (New York, New Jersey, Pennsylvania); East North Central (Ohio, Indiana, Illinois, Michigan, Wisconsin); West North Central (Iowa, Missouri, Nebraska, Kansas, Minnesota, North Dakota, South Dakota); South Atlantic (Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida); East South Central (Kentucky, Tennessee, Alabama, Mississippi); West South Central (Arkansas, Louisiana, Oklahoma, Texas); Mountain (Montana, Wyoming, Colorado, Utah, Idaho, Arizona, Nevada, New Mexico); Pacific (California, Hawaii, Washington, Oregon, Alaska).

Source: Bureau of Labor Statistics January 1986 Dislocated Worker Survey and Geographic Employment Profile, 1983 (Bulletin 2215), in "Dislocation: Who, What, Where and When," Industrial Union Department Research Paper, March 1987.

Statement by the AFL-CIO Executive Council

on

Plant Closing and Worker Dislocation Legislation

February 17, 1987
Bal Harbour, FL

Plant closings and mass layoffs strip three million workers of their jobs every year, with tragic consequences for the dislocated workers, their families and their local communities.

The manufacturing sector of the economy has been especially hard hit by plant closings and mass layoffs, contributing to the deindustrialization of the American economy and reflecting the destructive impact of corporate investment policies and federal fiscal, monetary and trade practices.

The heavy toll on dislocated workers includes:

- Joblessness averaging six months, with more than one-fifth of all dislocated workers remaining jobless for more than two years;
- An average wage reduction of 16 percent, with earnings losses of 30 percent for those required to switch occupations or industries to find new jobs.

In many instances, the injuries suffered by workers and their communities could be ameliorated, or avoided altogether, by timely government or private intervention. Some contemplated plant closings and mass layoffs are preventable; indeed, less than 10 percent of plant closings are due to bankruptcy or financial insolvency. And where a closing cannot be prevented, its disruptive effects can be minimized by a variety of readjustment measures.

Under decisions of the Supreme Court and the National Labor Relations Board, most plant closing decisions are not mandatory subjects of bargaining. This means that employers are free to bypass the collective bargaining process in making decisions on this most vital of matters, foreclosing the opportunity to search for constructive alternatives to a contemplated closing. Employers likewise have no legal obligation to provide advance notice to employees of plant closing or mass layoff decisions; indeed, a majority of blue-collar workers facing plant closings receive less than two weeks advance notice and one-third receive no notice at all.

The task force on plant closing and worker adjustment appointed by the Secretary of Labor concluded in its January 1987 report that: adequate advance notice is "an essential component of a successful adjustment program;" there is no evidence to support business fears regarding notice; and serious problems of worker adjustment now occur because corporate management rarely gives adequate advance notice.

The United States government has a responsibility to protect American workers and local communities against the devastating consequences of plant shutdowns and mass layoffs. In Canada, where advance notice is required, an industrial adjustment service of the federal government has been effective in working with labor and management to cope with plant closing and worker adjustment problems.

To minimize the human costs of economic change and to cushion adjustment by workers and local communities, the AFL-CIO calls for immediate passage of federal plant closing legislation that provides:

- Mandatory advance notice of contemplated plant closings and mass layoffs, accompanied by disclosure of all relevant information pertaining to the reasons for and basis of the contemplated action and possible alternatives to such action.

- Consultation with labor and the community and access to government technical assistance, to explore alternatives to closing and to plan assistance for workers and communities where a closing cannot be prevented.

- Compensation in the form of mandatory severance pay to workers who do not receive advance notice or whose union is not offered an opportunity for consultation with respect to a contemplated closing or mass layoff decision.

- An industrial assistance program on the Canadian model to provide rapid-response, plant-specific assistance for dislocated workers, including job training with adequate income support during training; education and relocation assistance; and employment service assistance for job-related counseling, job placement and job search.

In addition, the AFL-CIO supports legislation to expand trade adjustment assistance both in coverage and scope, financed by an import surcharge, to help those workers harmed by trade.

The AFL-CIO will support plant closing legislation that meets these objectives and urges early action by the Congress.

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Senator **Metzenbaum**. Thank you, Mr. Donahue. I have a few questions.

I might note that the co-Chair of this hearing, Senator Simon, has joined us. We are very happy to have you with us, Senator Simon. I do not know whether you have a preliminary statement you wish to make.

Senator **Simon**. Thank you, no. You entered it earlier in my behalf. I regret another committee meeting I had to be at, but I am pleased to be here and pleased to hear these witnesses.

Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you.

I have a couple of questions, and I know that Senator Quayle has several.

How do you answer charges that advance notice and consultation hasten a plant closing by reducing productivity and increasing financial instability?

Mr. **Donahue**. I just have not seen, Senator, the evidence that supports that suggestion. The Secretary's Task Force said in its report many of the fears regarding advance notice have not been realized in practice. In this regard, the Task Force found no evidence that the productivity of the work force is adversely affected during a notification period.

I simply have not seen the evidence of that downside effect, and obviously, if as many employers as have been suggested here are giving voluntary notice, then they do not see it either. I suggest the evidence runs to the contrary.

Senator **Metzenbaum**. Mr. Donahue, what do you regard as the major causes of dislocation? Are employers becoming more efficient, are they just moving from State to State, or are they losing these jobs to other countries, or are they moving their own operations to other countries?

Mr. **Donahue**. I guess, Senator, the only good answer to that is "all of the above." I think all of those things play out. I would ascribe a primary role in those causative effects to trade and to the effects of foreign trade on our employment patterns.

I think that the deficit numbers are clear, and they keep climbing. The effects of unfair trade on our work force are clear and demonstrable from those deficit figures. I think that is a primary role.

That is not to say that I would not agree that a certain amount of this change is inevitable in a period of economic change or in any society which has a dynamic economy. I think that we will always have some change, some plant closures, dislocations, relocations of work to change the economic conditions. And we do not pretend that that is not true.

Senator **Metzenbaum**. Governor Celeste made the point that if each State attempted to set up a notification and consultation procedure in its own State that there very likely would be a rush to the cellar to the States in order to see which one had the least regulatory procedures.

Do you have any comment on that?

Mr. **Donahue**. Well, I think I would share the view, because that is the experience in all of these cases and the provisions of any sort of regulation. The minority of employers who will behave inappropriately are going to look to that atmosphere in which they are least-regulated and which their inappropriate behavior will be least censured.

Senator **Metzenbaum**. In the area of corporate governance and corporate regulation, I think that has been totally proven in that all the corporations have rushed to Delaware because there is no regulation there.

Mr. **Donahue**. Sure. I think that there is the law of the least common denominator among some minority of employers who seek those ways to escape any degree of regulation of their conduct.

Senator **Metzenbaum**. Thank you very much.

Senator Quayle?

Senator **Quayle**. Thank you very much, Mr. Chairman.

Mr. Donahue, are labor unions at the liberty today to bargain for notice on layoffs?

Mr. **Donahue**. We are at liberty to bargain for it, yes, sir.

Senator **Quayle**. And business closings?

Mr. **Donahue**. Yes, sir.

Senator **Quayle**. Is that a bargaining issue right now?

Mr. **Donahue**. It is, in certain instances where it is advanced by the union and negotiated by the employer.

Senator **Quayle**. How many of the contracts would you say with major companies would you have this advance notification as part of the contract?

Mr. **Donahue**. About one-third.

Senator **Quayle**. About one-third. But is it basically standard operating procedure to put this in as a request for the advance notification?

Mr. **Donahue**. I could not tell you that I looked at the bargaining demands on those contracts that have been studied, Senator, but I would think that it is part of the instinct of any trade union negotiator to put it in as a subject for negotiation. It is part of any of the employers that resist giving notice to resist such a suggestion for inclusion in a contract.

Senator **Quayle**. Employers are required now to bargain about the effects—the effects—of business closing. Doesn't this mean that we really in effect have some advance notification since we have to bargain about the effects?

Mr. **Donahue**. I hardly think so, Senator. As you well know, we do not have under current interpretations plant closing or advance notice as a mandatory subject, and that is really what you and I are dancing about. It is not a mandatory subject of bargaining under the current regulations.

Where a progressive employer is willing to be responsive to the rational demand of a union on that subject, then you find it included in those agreements. We do the best we can in collective bargaining to get such notice, because we perceive the desirability of it. But we are not always successful.

Senator **Quayle**. Well, I guess my feeling is—there are a couple of court cases that have come down, the Fiber Paper Products and also the First National Maintenance Corporation, where it found that the employers had to bargain about the effects of plant closing, which I think means we are getting close to, just by some statutory interpretation, that you have got at least the effects on business closing.

But be that as it may, let me ask you, are you familiar with the Lovell Task Force recommendations on readjustment assistance?

Mr. **DONAHUE**. Yes, I am, Senator.

Senator **QUAYLE**. Why do you believe—and perhaps you can give me your viewpoint on why this issue of mandatory notification is such a contentious issue. I mean, they tried pretty hard. They had a pretty good group of people. I would imagine you would concur that they had a fairly good group of people that were on that committee.

I was just curious as to whether you might be able to shed some light on it from your perspective of why this has developed into very much of a contentious issue.

Mr. **DONAHUE**. Well, I think, Senator, that the six businessmen on that committee were simply unable to bring themselves to support mandatory notice; and the committee clearly split on that subject. That is reflected in the report, and I am sure that Mac Lovell would be happy to describe that process further to you.

Those six are all from major corporations, and those six probably all have a corporate procedure for mandatory notice. But that is not the question. The question is not what the major corporations will do. The question is do you attempt to impose a requirement on those who would choose to selfishly keep this information from their workers for whatever their own perceived advantage is. That is the group that you are legislating for.

These people simply could not bring themselves to agree to that. The trade unionists on that committee argued very strongly, I assure you, for mandatory notice.

Senator **QUAYLE**. Yes, I know they did. We had Mac Lovell at another hearing, and he said that they were unable to come to an agreement on this and pointed out that it is very much of a split in opinion.

I guess what I am trying to feel through here is some of the rationale and the reasons and the emotions and the dynamics that are caught up in this issue, and I think that there are a lot of——

Mr. **DONAHUE**. It is hard for me to offer you an analysis of employer motivation, but I will try if you wish. I think it is composed of equal parts of a feeling that, "Well, the government should not regulate anything, and why should it impose one more regulation on me. I am the master of my business, and I will decide when to close the plant, and nobody else has an interest in that which is high enough in my order of priorities to warrant my discussing it with them or reviewing it with them or consulting with them about alternatives."

I think, you know, when we address the need for change in confrontational attitudes and the need for change in labor-management relations, we ought to look at that side of the equation, and we ought to look at the people who do not favor labor-management cooperation on the employer side, and we ought to look at those who are still dealing in 1930s, 1940s values and ideas, and who do not see work as a partnership, who do not see their employees as contributors to the process, who are deserving of consideration in this kind of a decision. Those are the people you are going to legislate for.

Senator **Quayle**. Yes. And as you said, most of the major corporations and maybe even all the ones that are on that Task Force, they probably have an advance notification procedure already.

Mr. **Donahue**. I would assume that those six do, but I do not know that.

Senator **Quayle**. And you have heard the testimony of Governor Celeste, that indicated all the corporations in his State that were going through this. I can give you examples in my State of Indiana, that they are doing the same thing, the major ones. And it gets down to some of the exceptions, and that is the concern. When you start writing this mandatory notification, it is not for the big guys, it is more or less for a lot of the little guys out there.

Mr. **Donahue**. But it seems to me, Senator, you always legislate for a minority. You do not pass traffic rules for a lawless majority; the majority will drive carefully. You do not set any regulation in place in the face of 100 percent opposition to that regulation. Regulation grows out of the fact that it becomes an accepted concept of decent-thinking people. And then you say to those who appear not to be decent-thinking on the subject, "You ought to do that, too." And that is the 30 percent—the GAO report says 30 percent gave no notice to blue-collar workers, 26 percent gave no notice to white-collar workers. The statistics are clear, and you know them, on the numbers of days of notice and the inadequacy of that notice. And that is why we believe so strongly that unless you make it a mandatory requirement, we will continue to go along in a system in which three million people are displaced, and one million of those people get no notice of it until the day they are told to clean their lockers. I just think that is untenable.

Senator **Quayle**. In late 1985, the AFL-CIO sent a letter to Senator Kennedy, objecting to a bill called, "Alternatives to Hospitalization for Medical Technology-Dependent Children Act of 1985." This letter was signed by Ray Denison.

In the letter, the AFL objected to the proposal to mandate pediatric home health care in an all-employee health care package because—and I will just quote from it—"It will exacerbate an already serious situation with respect to Congress' apparent willingness to interfere in collective bargaining with other health care benefits." And further, it goes on, and I quote, "We do not believe that the Federal government should preempt these negotiations by mandating certain requirements that could involve cutbacks in hard-won coverage."

Isn't this somewhat analogous to the pending proposal on mandatory notification?

Mr. **Donahue**. I guess, Senator, only if you start from the premise that we believe in mandating absolutely everything in the world. I am sorry that I do not get, as you read that, a sense of that issue, nor am I familiar with the letter itself.

I would suggest that Mr. McGlotten is here, and he is Mr. Denison's successor, and if you would like, he can discuss that issue.

Senator **Quayle**. Okay. The sense of it—and I would rather not get into the specifics, if you are not aware of it; that is not my intent—but the sense of it is that we have issues that are for and remaining in the collective bargaining process. Pediatric home health care is one of the issues that could in fact be a collective bargaining item. If you give on that, then you may take away somewhere else.

It is the same thing that mandatory notification also is a collective bargaining issue. They are both collective bargaining issues. And when you sit down at the bargaining table, you trade off and on.

The intent of the letter said, hey, do not go interfering, because if we have to take certain things that maybe we do not want, or at least that the employer does not want, that they may say, okay, the Federal government says I have to take this issue, whether it be mandatory pediatric health care or mandatory notification. If I have to do that because of the Federal government, then I am going to take away somewhere else. That is the thrust of the question.

Mr. **McGlotten**. Senator, I really do not see the relationship between that letter, because it had to dc specifically with the question of mandating a health care benefits. There are a variety of benefits, maybe 150 benefits, that we negotiate for for our membership. We look at the condition of our work force and our members, and on that basis we try to negotiate what is proper and what we think is fair for our members in terms of health care.

What we are talking about now is mandated notice in terms of a plant closing. There are no other alternatives.

Senator **Quayle**. No, but that is also something that you negotiate for—you do not? I thought you did.

Mr. **Donahue**. We negotiate for it—as I tried to say to you, Senator—we negotiate for it wherever we can, yes, sir, wherever we can. And our study of 93 major contracts says that we have such notice in 33 of them—roughly one-third of those 93 major agreements.

I would think you would be equally concerned. I mean, even if I were to concede your point—which I do not—I would think you would be equally concerned about that 75 percent of the people, or 70 percent of the people, who are affected by these plant closings who are not represented in the collective bargaining process.

What if you did give us this as a mandatory subject of bargaining, and we had plant closing notice in every collective bargaining agreement—wouldn't you—I would think you or the Congress would still be concerned about those people who are not represented by a union and do not have that force to ensure appropriate employer behavior.

Senator **Quayle**. Yes, but I do not think we would write legislation just for non-union members, though.

Mr. **Donahue**. Well, we might be blessed by some benefit of that. But I would hope you would concern yourself with non-union members.

Senator **Quayle**. Well, yes, we are concerned with all workers. We are concerned with the whole dislocation problem. But I think the thrust of that says that legislation will be directed to the non-union members, since they are not covered at a bargaining table.

Mr. **Donahue**. Well, I make no such suggestion. I am saying to you that even if the union universe had 100 percent advance notice, this is an issue that we would still be here testifying for; we would still be urging the Congress to regulate the effect of plant closings non-union workers.

Senator **Quayle**. Yes, but we are not suggesting that we write legislation just for non-union workers.

Mr. **Donahue**. Of course not, of course not.

Senator **Quayle**. Okay.

Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you, Senator Quayle.

Senator Simon.

Senator **Simon**. Yes. First, if I may just comment on Senator Quayle's last statement, I think there are some things that are so basic in the way of protection that we should give to workers in this country that they really do not belong in the bargaining process. They are in the bargaining process now because we are not giving them that protection.

But when you start bargaining, ordinarily, there is kind of an assumption that the plant is going to continue to operate, if you want to bargain on wages and hours, on health issues and that sort of thing—and this is kind of a leading question, obviously—but is my assumption correct here, Mr. Donahue?

Mr. **Donahue**. Sure. And Senator, I think that the history of employee protective legislation in the United States would tell you that by and large, the unions led the way in establishing some condition on the job, and we then later folded that into legislation in one way or another to make it universally applicable. That is true in the whole range, certainly, of health and pension benefit regulation where the unions and employers establish a benefit first, then develop that, and then we have put that regulation into law to ensure its universal application. And that has been true in a number of other areas.

I think that the fact that unions try to deal with these issues ought not to exempt the issue from the consideration of legislation.

Senator **Simon**. And the fundamental question we face is, Is this a fundamental question we should give to workers? And frankly, a fundamental protection we also ought to provide on the industrial side, because if we do not provide this protection, our unemployment insurance costs escalate, and responsible employers have to pick up the tab for the less responsible employers.

Let me—and you may have covered this, or someone else may have covered this in earlier testimony—as you talk to your counterparts in other industrialized democracies, do you find that other democracies have plant closing legislation; and how does our absence of legislation compare to others?

Mr. **Donahue**. Senator, when I talk to colleagues in other industrial countries about employee protective legislation generally, I am embarrassed. We could stack our legislation up against that of almost any of the other industrial nations, and we are woefully deficient in terms of basic protections, in terms of conditions of employment. As you well know, many of the industrial nations provide by legislation a fairly wide-ranging coverage of employment condition type legislation, and certainly, the social legislation in most of those industrial nations goes far beyond our own.

There is contained in the report of the Secretary's Task Force the analysis of how other nations have dealt with plant closure legislation, and it tells you that Canada, Sweden, France, West Germany, the United Kingdom, Japan, and Australia all have dealt with plant closure and dislocated worker problems and have dealt with them far better than we have. It tells you that every one of those industrial nations save Australia has a mandatory notice feature that in most cases is far beyond what is suggested in S. 538. It tells you also, incidentally—and I would draw your and everyone's attention to it—in a collateral sense, it tells you what the comparable unemployment insurance benefits are, U.S. versus all those other countries, and it tells you about the degree of coverage and receipt of those benefits by unemployed workers in those nations.

If we really do that analysis, we ought to be ashamed of how far behind we are. On this specific issue, the notice feature is spelled out at page 32 of that report, and notes, "Yes", "Yes", "Yes", "Yes", "Yes", "Yes", and "No" in the case of Australia.

Senator SIMON. If I may shift to something that is not in this bill, but Senator Metzenbaum referred to and you just referred to, the U.I. benefits. You talked earlier about marginal employers moving where—to use your words—they would be least censured for their activities, and in fact, they are rewarded for certain activities. Does it make sense, not this year but at some point down the road, that we have national coverage, a national unemployment insurance program, so that we do not have plants moving from Illinois to even Indiana——

Senator QUAYLE. Oh, we would like that.

Senator SIMON [continuing]. But to other States, in order to save a few dollars; does that make sense, ultimately?

Mr. DONAHUE. Sure. Senator, as you well know, we have advocated Federalization and Federal standards of U.I. for a very, very long time. And in the absence of those standards, you have precisely the hodge-podge that you describe, precisely the advantage to the employer in the lowest unemployment insurance State, with the lowest cost. The competition between States to attract industry based on our U.I. benefits to workers are less than somebody else's, and therefore you should come to our State. Our workers' comp benefits to workers are less than they are in some other State, and it will cost you less, and therefore you should come here. I think that is an immoral competition.

So we certainly believe, then, that there is an absolute need for Federal standards of U.I. and for, most urgently, some immediate change in the system which would give unemployment insurance benefits to the unemployed.

The spectacle of a major industrial nation providing a system about which we have lied to people for 50 years, and we have said if you are unemployed, you collect unemployment insurance, and less than 30 percent or 31 percent of those people collect unemployment insurance—that is a horrible spectacle for us to present to the rest of the world, let alone to our own workers, and the failure of the promise that we made to them.

I just think that the situation of U.I. in this country is a national scandal, and I cannot understand why there is not a huge outcry against that current system. We are providing benefits to about 30 to 31 percent—and the number changes every month—to those who are unemployed less than 26 weeks. For those poor souls who are unemployed more than 26 weeks, we are providing benefits to about 1 percent, 1.2 percent, something like that. I believe it is only in the State of Alaska at the moment that we are providing benefits to anybody who is unemployed more than 26 weeks.

Well, you ought to take a look again, in this report of the Secretary's Task Force. Let me just read to you for the record, the comparisons of U.I. benefits.

"Canada, usually 12 months, longer if in training, 50 percent of the previous wage."

I should preface that by saying the summary here of the United States says 26 to 39 weeks, but I tell you, nobody, or a very small number, receive more than 26 weeks.

"Amount varies by States"—the amount of benefit. "It is roughly 35 to 40 percent of the previous wage."

"Canada, usually 12 months, longer if in training, 50 percent of the previous wage."

"Sweden, 300 days if under 55, 450 days if 55 or over, 80 percent of the previous wage."

Senator **Metzenbaum**. Mr. Donahue, can you wind up, please?

Mr. **Donahue**. Yes, sir.

"France, 12 months; West Germany, 312 days; U.K., 312 days." All of these are in benefit levels of 50 to 60, as high as 80 percent.

Our system is a national disgrace, Senator, and that problem ought to be addressed.

Senator **Simon**. I thank you.

Thank you, Mr. Chairman.

Senator **Metzenbaum**. I thank you, Senator Simon, Senator Quayle.

Senator Humphrey.

Senator **Humphrey**. Thank you, Mr. Chairman.

I will take but a moment. I want to read a brief statement. In fact I do not have questions for the witnesses.

Senator **Metzenbaum**. Is this your original statement?

Senator **Humphrey**. Yes.

Senator **Metzenbaum**. I put it in the record, but I certainly have no objection to your reading it at this point.

Thank you.

Senator **Humphrey**. Thank you.

Mr. Chairman, when S. 538 was introduced, I asked my staff to analyze Title II, the plant closings provisions. I am releasing that analysis today and ask that it be included in the record.

Senator **Metzenbaum**. Without objection, it will be included.

Senator **Humphrey**. The analysis, in my opinion, is too kind in its conclusion that Title II is a Marxist economist's dream.

Ironically, S. 538 as now written will dash any hope of saving the American heavy manufacturing industry. If, as this bill proposes, companies are forced to consult every time their work force fluctuates or an inefficient plant is closed, smokestack America will be dragged into the grave.

Let us not kid ourselves. This special-interest legislation is aimed at the steel and the auto industries. It is designed to make it more difficult to accomplish the inevitable, a restructuring and streamlining of these basic industries—a process that has been going on for over 30 years. I would point out that peak steel industry employment occurred in 1953 when 726,000 workers were employed. By 1982, less than 400,000 such workers remained.

Mr. Chairman, the Congressional Budget Office in a report issued recently concluded that unless antiquated plants were closed and antitrust policy relaxed, American steel companies would never become competitive again.

Yet this legislation before us goes in exactly the opposite direction, by diluting and confusing the decisionmaking authority to the point that decisions on which the life of a heavy will depend could take forever. It is like having a committee in the emergency room deciding how to treat a patient who is bleeding to death. You can bet that some members of that emergency room committee will not have the patient's interest at heart, but rather their own political-self-interest.

It is quite obvious that this bill would inhibit the closing of any facility. Countless lawsuits seeking injunctive relief will delay the inevitable; U.S. district courts, instead of the marketplace, will become the local citadels of economic wisdom and distributors of scarce resources.

I thank the Chairman for including that in the record.

Senator METZENBAUM. Thank you Senator Humphrey, and thank you, Mr. Donahue.

[The minority staff analysis of title II of S. 538 follows:]

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SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY
MINORITY STAFF ANALYSIS OF TITLE II OF S. 538

ON FEBRUARY 19, 1987, SENATOR METZENBAUM AND 9 OTHER SENATORS INTRODUCED THEIR PROPOSED THREE PART "ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT" (S-538). A COMPANION BILL WAS SIMULTANEOUSLY INTRODUCED IN THE HOUSE OF REPRESENTATIVES.

TITLE II OF THE LEGISLATION CREATES A SERIES OF NOTICE, CONSULTATION, AND DISCLOSURE REQUIREMENTS THAT WOULD APPLY TO EMPLOYERS IN THE EVENT OF MOST PLANT CLOSINGS AND/OR LAYOFFS.

AT THE PRESS CONFERENCE PROCEEDING THE INTRODUCTION, SEN METZENBAUM ISSUED A STATEMENT SUGGESTING THAT HIS LEGISLATION WILL "HELP WORKERS GIVE THE COMPETITIVE EDGE BACK TO AMERICA." THIS ANALYSIS WILL BRIEFLY ADDRESS CERTAIN ASPECTS OF TITLE II: IT IS NOT MEANT TO BE AN IN-DEPTH CRITIQUE OF THE ENTIRE BILL. HOWEVER, IT SHOULD BE NOTED THAT TITLE I REDUCES TO LEGISLATIVE LANGUAGE THE BASIC TENETS AGREED UPON BY A JOINT LABOR-INDUSTRY-GOVERNMENT TASK FORCE ESTABLISHED BY SECRETARY OF LABOR BROCK, AND WHICH REPORTED ITS CONSENSUS RECOMMENDATIONS TO THE CONGRESS IN JANUARY. TITLE II CONTAINS PROVISIONS REJECTED BY THE BROCK TASK FORCE.

I. SECTION-BY-SECTION SUMMARY OF TITLE II

SECTION 202--- REQUIRES A 90, 120, OR 180 DAY ADVANCE WRITTEN NOTICE IN THE EVENT OF A PLANT CLOSING OR LAYOFF INVOLVING 50 OR MORE EMPLOYEES: 90 DAYS IN THE CASE OF 50-99 EMPLOYEES; 120 DAYS IN THE CASE OF 100-499 EMPLOYEES; AND 180 DAYS IN THE CASE OF 500 OR MORE EMPLOYEES. THESE PERIODS CAN BE CUT SHORT IN THE EVENT THAT "UNFORSEEABLE BUSINESS CIRCUMSTANCES PREVENT THE EMPLOYER FROM WITHHOLDING" THE CLOSING OR LAYOFF. NOTICE MUST BE GIVEN TO 1) EMPLOYEE REPRESENTATIVES OR, ABSENT EMPLOYEE REPRESENTATIVES, TO EACH AFFECTED EMPLOYEE: 2) THE STATE DISLOCATED WORKER UNIT: AND 3) THE UNIT OF LOCAL GOVERNMENT.

A "PLANT CLOSING OR MASS LAYOFF" IS DEFINED(SEC. 201(2)) AS "AN EMPLOYMENT LOSS FOR 50 OR MORE EMPLOYEES OF AN EMPLOYER AT ANY SITE DURING ANY 30 DAY PERIOD." AN "EMPLOYMENT LOSS" (SEC. 201(5)) IS ANY:

(1) TERMINATION, OTHER THAN A DISCHARGE

FOR CAUSE, VOLUNTARY DEPARTURE, OR RETIREMENT;

(2) LAYOFF OF INDEFINITE DURATION;

(3) LAYOFF OF DEFINITE DURATION EXCEEDING SIX MONTHS;OR

(4) 50 % OR GREATER REDUCTION OF WORK HOURS DURING ANY SIX MONTH PERIOD.

CLOSINGS AND/OR LAYOFFS AT TWO OR MORE EMPLOYER FACILITIES WHICH EXCEED 50 EMPLOYEES WHEN COMBINED, AND OCCURRING WITHIN ANY 90 DAY PERIOD, ARE CONSIDERED TO BE A PLANT CLOSING OR MASS LAYOFF UNLESS THE EMPLOYER DEMONSTRATES THAT THE LOSSES ARE THE RESULT OF DISTINCT ACTIONS AND CAUSES, AND ARE NOT AN ATTEMPT TO EVADE THE REQUIREMENTS OF THE ACT.(SEC. 205(c))

THE ADVANCE WRITTEN NOTICE OF THE CLOSING OR LAYOFF BECOMES MERELY A "PROPOSAL" AT THE POINT IN TIME WHEN NOTICE IS REQUIRED.

SECTION 203--- AFTER NOTICE IS GIVEN, UPON REQUEST, THE EMPLOYER MUST MEET AND CONSULT IN GOOD FAITH "FOR THE PURPOSE OF AGREEING TO A MUTUALLY SATISFACTORY ALTERNATIVE TO OR MODIFICATION OF SUCH PROPOSAL" TO CLOSE A PLANT OR LAYOFF EMPLOYEES. GOOD FAITH CONSULTATION IS ONLY REQUIRED OF THE EMPLOYER.

THERE IS AN EXPRESS PROVISION THAT LIMITS THE LEGAL BURDEN PLACED ON THE EMPLOYER WHO "MEETS AT REASONABLE TIMES AND CONSULTS IN GOOD FAITH." SUCH EMPLOYER IS NOT "COMPELLED" TO AGREE TO SUCH AN ALTERNATIVE OR MODIFICATION TO THE "PROPOSAL."

STATE DISLOCATED WORKER UNITS MUST ESTABLISH SELECTION PROCEDURES FOR EMPLOYEES THAT ARE NOT REPRESENTED BY UNIONS DETERMINED UNDER FEDERAL LAW.

SECTION 204--- PLACES THE BURDEN OF ESTABLISHING THE RATIONALE FOR THE CLOSING OR LAYOFF ON THE EMPLOYER; THE EMPLOYER MUST DISCLOSE TO THE REPS AND TO THE LOCAL GOVERNMENT, IF REQUESTED, "SUCH RELEVANT INFORMATION AS IS NECESSARY FOR THE THOROUGH EVALUATION OF THE PROPOSAL TO ORDER A PLANT CLOSING OR MASS LAYOFF OR FOR THE THOROUGH EVALUATION OF ANY ALTERNATIVES OR MODIFICATIONS SUGGESTED TO SUCH PROPOSAL."

SECTION 205--- ENFORCEMENT: EMPLOYERS WHO VIOLATE THE STATUTE SHALL BE LIABLE FOR BACK PAY TO EACH EMPLOYEE: EMPLOYERS WILL BE LIABLE TO LOCAL GOVERNMENTS FOR CIVIL PENALTIES OF $500 PER DAY. THIS IS NOT AN EXCLUSIVE REMEDY: THE EXISTING CONTRACTUAL, STATUTORY, AND OTHER LEGAL RIGHTS OF EMPLOYEES ARE NOT LIMITED BY THE PROVISIONS OF THIS BILL; RATHER THEIR PROPOSED RIGHTS AND REMEDIES ARE IN

ADDITION TO THOSE PROVIDED BY STATE AND FEDERAL LAW.

II-- ANALYSIS-ADVANCE NOTIFICATION AND CONSULTATION

EMPLOYERS CURRENTLY ARE UNDER NO DUTY TO GIVE NOTICE OR TO CONSULT WITH THEIR EMPLOYEES, SUBJECT TO ANY AGREED UPON CONTRACTUAL PROVISIONS IN A COLLECTIVE BARGAINING AGREEMENT. EMPLOYEES, THROUGH THEIR UNIONS, ARE COMPLETELY WITHIN THEIR RIGHTS TO OBTAIN ADVANCE NOTICE AND CONSULTATION REQUIREMENTS AT THE BARGAINING TABLE.

UNDER CURRENT LAW, UNLESS A COLLECTIVE BARGAINING CONTRACT REQUIRES MORE, AN EMPLOYER IS REQUIRED TO BARGAIN WITH A UNION ONLY OVER THE "EFFECTS" OF A PLANT CLOSING.(FIRST NATIONAL MAINTENANCE CORP v NLRB,452 US 666(1981)). SECTION 8(d) OF THE NATIONAL LABOR RELATIONS ACT REQUIRES THAT THIS BARGAINING BE IN "GOOD FAITH." GOOD FAITH BARGAINING IS A STATUTORY REQUIREMENT FOR THE UNION AS WELL AS THE EMPLOYER AND REQUIRES THAT THE PARTIES "PARTICIPATE ACTIVELY IN THE DELIBERATIONS SO AS TO INDICATE A PRESENT INTENTION TO FIND A BASIS FOR AGREEMENT..."(NLRB v MONTGOMERY WARD,133 F.2D 676(1943)). EACH PARTY MUST HAVE "AN OPEN MIND AND A SINCERE DESIRE TO REACH AN AGREEMENT,"(NLRB v TRUITT MFG. CO, 351 US 149(1956)) AND MUST MAKE "A SINCERE EFFORT... TO REACH A COMMON GROUND."(MONTGOMERY WARD, 133 F.2D AT 686). HOWEVER, SECTION 8(d) SPECIFICALLY PROVIDES THAT THE DUTY TO BARGAIN IN GOOD FAITH "DOES NOT COMPEL EITHER PARTY TO AGREE TO A PROPOSAL OR REQUIRE THE MAKING OF A CONCESSION..."

THE PROVISIONS OF TITLE II GO WELL BEYOND CURRENT STATUTORY REQUIREMENTS. FIRST, AN EMPLOYER WOULD BE REQUIRED TO PROVIDE NOTICE OF A PLANT CLOSING OR LAYOFF EVEN IN INDUSTRIES LIKE CONSTRUCTION WHERE IT IS OBVIOUS JOBS WILL BE LOST AS THE PROJECT IS COMPLETED. SECOND, INSTEAD OF MERELY BARGAINING "IN GOOD FAITH,"EMPLOYERS WOULD BE REQUIRED TO CONSULT IN GOOD FAITH FOR THE EXPRESS "PURPOSE OF AGREEING TO A MUTUALLY SATISFACTORY ALTERNATIVE TO OR MODIFICATION OF" THE PROPOSED CLOSING OR LAYOFF. ALTHOUGH TITLE II PROVIDES THAT THIS REQUIREMENT IS NOT MEANT TO COMPEL AN ACTUAL AGREEMENT, THE CHOICE OF THE DRAFTERS TO ADD THE "PURPOSE OF ..."LANGUAGE THAT GOES WELL BEYOND THE GOOD FAITH EFFORTS REQUIRED BY SECTION 8(d) OF THE NATIONAL LABOR RELATIONS ACT STRONGLY SUGGESTS THAT THIS LEGISLATION IS INTENDED TO REQUIRE FAR MORE THAN NEGOTIATING WITH A SINCERE DESIRE TO REACH AN AGREEMENT. ONLY WITH GREAT DIFFICULTY WILL AN EMPLOYER BE ABLE TO DEMONSTRATE TO A FEDERAL JUDGE THAT IT CONSULTED WITH THE REQUISITE PURPOSE UNLESS IT DOES IN FACT REACH AN AGREEMENT WITH THE EMPLOYEE REPRESENTATIVE AND/OR LOCAL GOVERNMENT REPRESENTATIVE.

MOREOVER, THIS NEW STANDARD APPEARS TO BE INTENDED TO ELIMINATE AN EMPLOYER'S RIGHT UNDER CURRENT FEDERAL LABOR LAW TO NEGOTIATE TO IMPASSE. IF THIS RIGHT IS INDEED ELIMINATED, AN EMPLOYER WOULD NOT BE ABLE TO CARRY OUT A PLANT CLOSING OR LAYOFF, NO MATTER HOW NECESSARY IT MAY BE FOR SURVIVAL, UNTIL SOME AGREEMENT IS REACHED.

FINALLY, WHILE TITLE II STRICTLY DEFINES THE EMPLOYER'S DUTY TO CONSULT, CORRESPONDING DUTIES ARE NOT REQUIRED OF EMPLOYEE REPRESENTATIVES OR LOCAL GOVERNMENT OFFICIALS. THEY ARE NOT REQUIRED TO CONSULT FOR THE PURPOSE OF AGREEING, NOR ARE THEY EVEN REQUIRED TO CONSULT IN GOOD FAITH. UNLIKE THE EMPLOYER, THEY APPARENTLY ARE NOT BARRED FROM INSISTING ON A POSITION--NO MATTER HOW UNREASONABLE--TO IMPASSE.

THE ULTIMATE PURPOSE OF THE NOTICE AND CONSULTATION REQUIREMENTS OF TITLE II APPEARS TO BE THE CREATION OF A ONE-SIDED SYSTEM OF "BARGAINING." EMPLOYERS WILL BE FORCED, AS A PRACTICAL MATTER BY THEIR OBLIGATIONS UNDER THE TITLE AND BY THE THREAT OF PROTRACTED LITIGATION, TO SUCCUMB TO WHATEVER DEMANDS ARE MADE BY EMPLOYEE AND/OR LOCAL GOVERNMENT REPRESENTATIVES CONCERNING A PROPOSED PLANT CLOSING OR LAYOFF. AT A MINIMUM IT WILL REQUIRE EMPLOYERS TO PROVIDE DETAILED INFORMATION ABOUT THEIR DECISION, EXPLAIN THEIR REASONING, AND CAREFULLY CONSIDER AND EVALUATE ALTERNATIVES OFFERED BY EMPLOYEES AND/OR LOCAL OFFICIALS. THIS WILL BE A TIME CONSUMING AND COSTLY PROCESS. IT IS ALSO REPETITIVE; EMPLOYERS WILL ALREADY HAVE EXPLORED ALL FEASIBLE ALTERNATIVES BEFORE DECIDING TO SHUTDOWN OR LAYOFF WORKERS.

III-- ANALYSIS- PROTRACTED LITIGATION

TITLE II PERMITS CIVIL ACTIONS BY AGGRIEVED EMPLOYEE OR LOCAL GOVERNMENT REPRESENTATIVES FOR ANY PLANT CLOSING OR LAYOFF UNDERTAKEN IN VIOLATION OF ANY OF THE NOTICE, CONSULTATION, OR DISCLOSURE REQUIREMENTS IMPOSED ON EFFECTED EMPLOYERS. THE PROMISE OF CONTINUED EMPLOYMENT, BACK PAY, AND CIVIL PENALTIES IS LIKELY TO INDUCE A FLOOD OF SUCH LAWSUITS EVERY TIME AN EMPLOYER CLOSES A PLANT OR REDUCES THE WORKFORCE AS NECESSARY. THESE SUITS WILL BE DIFFICULT FOR THE EMPLOYER TO DEFEND BECAUSE THE LEGAL BURDENS ARE ALL PLACED ON THE EMPLOYER AND THE STANDARDS FOR THE EMPLOYER'S DUTY TO CONSULT ARE VAGUE. EMPLOYEES AND LOCAL OFFICIALS WITH A SELF SUSTAINING INTEREST WILL BE QUICK TO CONTEND IN COMPLAINTS THAT THE EMPLOYER DID NOT CONSULT WITH THE "PURPOSE OF AGREEING TO A MUTUALLY SATISFACTORY ALTERNATIVE TO OR MODIFICATION OF" THE "PROPOSED" PLANT CLOSING OR LAYOFF. THE EMPLOYERS FAILURE TO REACH SUCH AN AGREEMENT WILL BE EVIDENCE THAT THE EMPLOYER NEVER HAD THE NECESSARY PURPOSE.

ANYONE CAN SEE THE CERTAIN MISCHIEF THAT WILL OCCUR WITH

THE INCREDIBLE POWERS THAT THIS LEGISLATION GRANTS TO ANY PUBLIC OFFICIAL WHO ACTS IRRESPONSIBLY DURING THE HARD TIMES ASSOCIATED WITH A PLANT CLOSING OR LAYOFF. THE VAGUE AND BURDENSOME PARAMETERS OF THE EMPLOYER'S DUTY TO CONSULT WILL BECOME A VERY REAL THREAT, AND A POWERFUL LEVERAGE, FOR OPPOSING GROUPS WHO KNOW THAT THEY CAN RESORT TO THE FEDERAL COURTS ANYTIME THE EMPLOYER DOES NOT MEET THEIR DEMANDS.

IN ADDITION, BECAUSE THE CIVIL ACTIONS ALLOWED EMPLOYEES UNDER THIS TITLE ARE NOT DEFINED AS AN EXCLUSIVE REMEDY, INJUNCTIVE RELIEF WILL BE AVAILABLE IN FEDERAL DISTRICT COURTS REQUIRING EMPLOYERS TO MAINTAIN THE STATUS QUO(I.E. CONTINUE OPERATING) UNTIL THE COURT DETERMINES THAT THE EMPLOYER HAS MET ITS OBLIGATIONS. IN SO DOING. COURTS WILL EVEN BE EVALUATING THE PROPOSED "ALTERNATIVE OR MODIFICATION;" A TASK COURTS ARE NOT VERY WELL EQUIPPED TO DO. ANY SUCH INTERFERENCE BY THE COURTS CAN ONLY HAVE A NEGATIVE IMPACT ON THE ECONOMY; NECESSARY PLANT CLOSINGS AND LAYOFFS WILL BE DELAYED FORCING EMPLOYERS TO CONTINUE CHANNELING SCARCE RESOURCES INTO FAILING OPERATIONS.

IT IS NOT QUITE CLEAR TO STAFF EXACTLY HOW THE REQUIREMENTS OF TITLE II WILL IMPACT BANKRUPTCY FILINGS, BUT THE REQUIREMENTS APPEAR TO BE SUPERIMPOSED ON TOP OF EXISTING TITLE XI REQUIREMENTS.

IV-CONCLUSIONS

1. TAKEN TOGETHER, THE REQUIREMENTS OF TITLE II ARE AN UNREASONABLE STATUTORY BURDEN ON EMPLOYERS WHETHER THEY ARE CONDUCTING DAY-TO-DAY OPERATIONS OR MAKING DECISIONS INVOLVING A FINAL SHUTDOWN. THE CONSULTATION REQUIREMENT, WITH ITS BUILT IN PROPENSITY FOR PROTRACTED LITIGATION, IS AN IRRATIONAL ECONOMIC APPROACH TO THE STATED INTENTIONS OF THE BILL'S COSPONSORS. IT IS NOT REASONABLE TO REQUIRE EMPLOYERS TO CONTINUE OPERATING UNPROFITABLE PLANTS; IT IS NOT REASONABLE TO REQUIRE THAT DISTRESSED EMPLOYERS NEGOTIATE EVAN AS THE ENTERPRISE COLLAPSES; IT IS A MAJOR ECONOMIC MISTAKE TO REQUIRE THE ECONOMY TO SUPPORT NON-COMPETITIVE OPERATIONS AT THE EXPENSE OF INVESTING IN NEW TECHNOLOGY OR NEW OPERATIONS.

2. NOTHING WILL DETER THE CREATION OF NEW BUSNESSES, PLANTS AND JOBS, OR THE EXPANSION OF EXISTING ONES, MORE THEN DENYING OWNERS THE RIGHT TO INSTANTLY CUT THEIR LOSES: UNDER THIS BILL THE BENEFITS OF A FREE FLOW OF CAPITAL TO ITS OPTIMUM USES WILL LARGELY BE AT THE MERCY OF WHATEVER INDUSTRIAL POLICY LOCAL POLITICIANS AND FEDERAL JUDGES DICTATE.

3. THIS PROPOSAL REPRESENTS NOTHING MORE THEN A POWER GRAB BY ORGANIZED LABOR AND A DISPERATE ATTEMPT ON THEIR PART

TO KEEP ALIVE, AT THE EXPENSE OF HEALTHY SEGMENTS OF THE ECONOMY, THOSE DISTRESSED INDUSTRIES AND OPERATIONS THAT ARE NON-COMPETITIVE.

4. THE CONSULTATION PROVISIONS OF THE PROPOSAL ARE AN ALLURING TRAP: LABOR-MANAGEMENT RELATIONS, HERETOFOR LEFT ENTIRELY TO THE PRIVATE SECTOR EXCEPT IN THE MOST UNUSUAL CIRCUMSTANCES, WOULD NOW BECOME TRI-PARTITE IN NATURE. LOCAL OFFICIALS WILL BE ABLE TO INTERJECT THEIR POLITICAL CONSIDERATIONS INTO THESE CONSULTATIONS AS THEIR FORTUNES DICTATE.

5. THIS PROPOSAL IS NOT JUST A LIBERAL RESPONSE TO THE TRAGEDY OF PLANT CLOSINGS: ITS DEGREE OF FEDERAL AND LOCAL GOVERNMENT INTERVENTION INTO PRIVATE SECTOR ECONOMIC DECISIONS IS A MARXIST ECONOMIST'S DREAM. UNDER THE GUISE OF SIMPLE NOTICE AND CONSULTATION REQUIREMENTS, THIS PROPOSAL IS THE MOST RADICAL RESTRUCTURING OF ECONOMIC DECISION MAKING PROPOSED IN RECENT YEARS.

V -- POSTSCRIPT

THE REAL SHAME OF THE METZENBAUM PROPOSAL IS THAT IT COMPLETELY KNOCKS LABOR-MANAGEMENT RELATIONS OUT OF KILTER; AND THIS FACT ALONE QUITE PROBABLY WILL DEFEAT THE LEGISLATION. THUS ANY EFFORT OF THE COMMITTEE TO CONSTRUCTIVELY ADDRESS THE PROBLEMS CONFRONTING INDUSTRIAL RELATIONS IN DISTRESSED INDUSTRIES MAY WELL BE PRECLUDED BY THE SCOPE AND ONE-SIDED NATURE OF THIS PROPOSAL.

Senator **Metzenbaum**. The Chair now has six more witnesses, which we hope to hear in the next 30 minutes.

Mr. Roger Semerad, Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, Washington, D.C. It is nice to have you with us, Mr. Semerad. I am afraid I am going to have to be rather strict on the five-minute rule for the rest of the witnesses. I was not for the earlier witnesses, and now I am in trouble.

Please proceed.

STATEMENT OF ROGER D. SEMERAD, ASSISTANT SECRETARY OF LABOR FOR EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR, WASHINGTON, DC, ACCOMPANIED BY BOB JONES, DEPUTY ASSISTANT SECRETARY, AND PATRICIA McNEIL, ADMINISTRATOR, OFFICE OF STRATEGIC PLANNING AND POLICY DEVELOPMENT

Mr. **Semerad**. Mr. Chairman, thank you very much. I am pleased to be here with the Committee again.

I have Bob Jones, my Deputy, with me, and Trish McNeil, the Administrator of my policy development and planning organization.

We are pleased to have the opportunity to testify. I hope my full statement can be included in the record.

Senator **Metzenbaum**. Without objection, it will be.

Mr. **Semerad**. Our proposal, the Administration's worker readjustment proposal, is contained in the President's Trade, Employment and Productivity Act, and I am confident that we will be able to have a constructive dialogue on key issues addressed by our proposal and those in your bill, S. 538.

One of the most important elements in the President's competitiveness package concerns investment in human capital. Our work force must have the flexibility and skills required for the jobs of the future. The Trade, Employment and Productivity Act contains four legislative initiatives developed by the Department of Labor to address the human resource dimension of competitiveness.

These proposals will establish a new Worker Readjustment Program, incorporate an AFDC Youth Initiative under JTPA, refocus the employment service, and decentralize administrative financing of the Unemployment Insurance system.

In the interest of time, let me focus on the serious problem of worker dislocation, which will continue to be with us as we strive to maintain our dynamic economy and hence our competitiveness in the world at large.

The question is how do we minimize the effects of displacement on the worker and the community. Our nation needs the skills, experience and productive energy of these workers. We must redeploy this capacity much more quickly in a rapidly-changing economy.

We now have programs in place that attempt to address worker dislocation—JTPA Title III, TAA, and UI, each with basic limitations.

Our new proposal incorporates many of the recommendations of Secretary Brock's Task Force and the President's Commission on

International Competitiveness and is based on JTPA experience in assessing what works best for dislocated workers.

Our Worker Readjustment Assistance Program is based on a set of principles we consider essential to any new legislation to help dislocated workers. The program covers all workers regardless of the cause of their dislocation. It provides incentives for early notification of plant closing and mechanisms for early intervention. There are close linkages to the UI system. This program stresses adjustment assistance and training rather than income support, and it provides flexibility to target resources quickly.

Some key features of our bill are as follows: a $980 million program to help 700,000 workers each year. It replaces Title III of JTPA and TAA. There are three types of services: basic readjustment, retraining, and the Secretary's discretionary fund activities, including demonstration and technical assistance projects.

Mr. Chairman, there have been a number of worker adjustment proposals introduced in the Congress including your own Economic Dislocation and Worker Adjustment Assistance Act, which also draws on findings and recommendations of the Secretary's Task Force. While some of the features of our proposals differ, we are trying to achieve the same results. I look forward to working with you to achieve enactment of an effective Worker Readjustment Program in this historic 100th Congress.

I will be pleased to answer any questions at this time.

Thank you very much.

[The prepared statement of Mr. Semerad follows:]

STATEMENT OF
ROGER D. SEMERAD
ASSISTANT SECRETARY OF LABOR
FOR EMPLOYMENT AND TRAINING
BEFORE THE
SUBCOMMITTEE ON LABOR
AND THE
SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY
SENATE LABOR AND HUMAN RESOURCES COMMITTEE

March 10, 1987

Mr. Chairmen and Members of the Subcommittees:

I am pleased to have this opportunity to testify before you today on the Administration's Worker Readjustment proposal. As you know, this proposal is contained in the "Trade, Employment and Productivity Act of 1987" which the President transmitted to the Congress on February 19. As the Congress and the Administration jointly consider the important subject of competitiveness, I want to discuss with you key issues that are addressed in our proposal.

I could not agree more with Secretary Brock's recent testimony before the House Education and Labor Committee that America faces a competitive challenge in the decades ahead which also holds enormous opportunity for our economy, the standard of living we enjoy, and our quality of life.

A complex set of factors accounts for our country's present competitive position. Some major ones are the Federal budget deficit, our slow overall productivity growth, and the critical need for a better education and training system, one that prepares both our young people and experienced workers for the changing nature of the labor market. We cannot ignore the impact of these factors: newly industrialized countries have emerged as potent competitors to our preeminence in the international marketplace.

And we are not ignoring the result. The President has established a national goal of assuring America's competitive preeminence into the 21st century. To achieve this, will require all major institutions in our society to reshape themselves to meet the international challenge.

Businesses must operate more effectively, setting higher standards of quality, streamlining operations, and adapting to change. Workers must become more productive, investing in themselves through improved skills, education, and training. The education community must strive for excellence. Government, too, has a key role to play: at all levels, it must encourage both reform and excellence.

To this end, the President has launched a six-pronged program that aims at:

- Increasing investment in human and intellectual capital;
- Promoting the development of science and technology;
- Doing a better job of protecting intellectual property;

- Enacting essential legal and regulatory reforms;
- Reducing the budget deficit; and
- Improving the international economic environment.

Each of these elements will help make America -- and its products -- more competitive, thereby improving the standing of the United States in the world economy.

Investment in human capital is a key element. Success in other areas will not make America more competitive if our workforce lacks the skills and flexibility that will be required for the jobs of the future, and thus the ability to be more productive than ever before.

The "Trade, Employment and Productivity Act of 1987" contains four legislative initiatives developed by the Department of Labor to address the human resource dimensions of the problem of competitiveness:

- A proposal to establish a new Worker Readjustment Program;
- An AFDC Youth Initiative to target fundamental services to youth in welfare families under the Job Training Partnership Act (JTPA);
- A proposal to refocus the public employment service; and
- A proposal to decentralize administrative financing of the Unemployment Insurance system.

Together, these initiatives will strengthen the ability to administer training and employment services effectively and to focus resources on two critical areas: the need to alleviate chronic welfare dependency among youth from welfare families, and the need for rapid redeployment of experienced workers dislocated because of a variety of economic factors.

The combined impact of these initiatives will establish a new, more flexible and closely integrated training and employment system at the State and local levels, and increase the Governors' discretion in managing services and program resources.

Under broad Federal guidelines, States will be able to plan and coordinate where, when and how resources will be used under the basic JTPA programs, under a new worker readjustment program, and in employment service programs. By enhancing the Governors' ability to target resources, efficiencies can be attained and critical problem areas can be targeted more effectively.

In addition, the important partnership between the private sector and government will be strengthened through our proposals. The private sector will be given a larger role -- through local Private Industry Councils and State training and employment councils -- a role that will provide for guidance and oversight in the planning and delivery of services. this private sector participation is essential and will continue to be essential in our efforts to assure that programs can respond to State and local labor market conditions, to training needs of our work force, and the skill demands of employers.

Under the Administration's proposed Fiscal Year 1988 Budget, we have requested $4.4 billion for training and job services, plus $2.4 billion in grants for the administration of employment service and unemployment compensation programs. This is a substantial increase over the 1987 appropriation, but an expanded investment in our human resources is an important component of our program to regain our competitive edge.

Let me turn now to the particular problem of dislocated workers, which our proposed worker readjustment program addresses.

Worker disclocation is a serious issue, one that has been with us for some time, and one that is an inevitable feature of a dynamic economy. It is a problem that is not going to go away. As our Nation strives to maintain its dynamic economy and enhance its competitiveness, we will continue to produce new goods and services and adopt new technologies and production techniques.

It is inevitable that in response to changed consumer preferences, new technology, and other factors, inferior products and inefficient production methods will be replaced; older plants and production lines will be closed down; and worker dislocations will occur.

The issue we must address not is how to minimize the effects of these displacements on the worker and on the community. It is also important to our Nation that we utilize and thus benefit from the job skills, experience, and productive energy of workers who lose their jobs through no fault of their own.

What are the dimensions of the problem we are addressing? A Bureau of Labor Statistics (BLS) Survey completed in January 1986 found that in the previous five years, 10.8 million adults permanently lost their jobs because their plant closed or their job was abolished. Nearly half of these workers had been at their jobs for at least three years when they were let go. When the workers were surveyed, BLS found that 67 percent of those who had been displaced were reemployed, 18 percent were still jobless, and 15 percent had left the work force altogether. Of the employed, 56 percent were earning as much or more than on their former job, while 44 percent found lower paying jobs.

As you know, Secretary Brock appointed a Task Force to look at economic adjustment and worker dislocation. The Task Force, which issued its final report last December, found that worker dislocation constitutes a markedly different kind of unemployment in many respects.

Many displaced workers have had long periods of attachment to their employers. Frequently the jobs lost have been achieved after working many years for a single employer. The workers often have difficulty finding jobs that pay as much at the outset, or are comparable in other ways. The adjustment of these workers frequently is made more difficult because of age, obsolete skills, family responsibilities, and community ties. When displacement hits a lare number of people in one area, the workers affected and their communities can be devastated.

We believe it essential that the nation have in place an effective policy and program for dislocated workers for the following reasons:

- The slow labor force growth, resulting from the demographic changes we face over the coming decade, makes the full use of worker potential essential -- particularly the potential of those who have a proven capacity and talent for productive work.
- The changing world economic and trade picture, and our own national interest, demand a flexible U.S. labor force that can adjust rapidly to new conditions.
- There is a broad consensus that dislocated workers should not have to bear the full burden of the adjustment process.

We already have in place programs that attempt to address various aspects of the worker dislocation problem -- the JTPA Dislocated Worker Program, Trade Adjustment Assistance (TAA), and Unemployment Compensation. Each of these approaches has its merits, but also serious limitations.

TAA applies only to trade-impacted workers and involves a cumbersome and time-consuming certification process. In too many States, there have been delays in mounting the JTPA Title III programs and enrolling displaced workers. The Unemployment Insurance (UI) system is oriented toward income replacement, rather than assisting in the adjustment process. A new, more comprehensive approach for dislocated workers is obviously called for.

The importance the Administration places on an effective adjustment policy is demonstrated by our willingness to launch a major new initiative at a time of serious budget constraints. Our proposal incorporates many of the recommendations of the Secretary's Task Force on Worker Dislocation, the President's Commission on International Competitiveness, and the Cabinet Council Working Group on Human Capital. It also draws on the best features of the JTPA dislocated worker program and on our experience in learning what works best for these workers.

Furthermore, our proposal is based on a set of principles that we are convinced are essential to any new legislation to help dislocated workers.

- First, the program we have proposed is comprehensive and covers all workers regardless of the cause of their dislocation.

- Second, it provides incentives for early notification of plant closings and layoffs, and mechanisms for early intervention in those situations.
- Third, there are close linkages to the Unemployment Insurance system.
- Fourth, the program stresses adjustment assistance and training -- as opposed to income support, and
- Fifth, it provides flexibility to target resources to where dislocations occur, and flexibility to move resources to those areas as quickly as the need arises.

Let me briefly describe some of the key features of the Administration's bill affecting Department of Labor programs, and then I will answer any questions you have.

Our proposal would set up a $980 million program to help 700,000 workers each year. It is a new program and would replace both Title III of JTPA and Trade Adjustment Assistance. Eligibility would be broad-based -- essentially the same criteria used under Title III today. There would be three types of services provided: Basic Readjustment Services, Retraining Services, and Secretary's Discretionary Fund activities.

Governors would receive about $300 million of the funds, by formula, to establish an on-going infrastructure in each State that would provide basic readjustment services. These services would include assessment, counseling, labor market information, and job search assistance.

Governors also would establish a rapid response capability to deal quickly with plant closing or mass layoff situations. This would be accomplished by such actions as helping to set up voluntary labor-management committees, and identifying and mobilizing State and community resources.

Eighty percent of the basic readjustment funds would be channeled to substate areas by a formula determined by the Governor. The Governor would negotiate with local elected officials and Private Industry Councils (PICs) in substate areas as to who would administer the local grants and how the services would be provided. Those who could administer substate grants include PICs, State agencies, local governments, community colleges, or non-profit agencies.

One-half, or almost $500 million, of the funds under our proposal would be available for retraining services. These services would include traditional classroom and on-the-job training, relocation assistance, vouchers to individuals to arrange their own training at approved institutions, and a new concept called a certificate of eligibility for training.

Let me briefly explain this certificate and the rationale behind it. We have found that dislocated workers are often reluctant to enroll in training. They want another job.

Under our proposal, these workers would be given a certificate of eligibility for training which they could redeem, depending on the availability of funds, at any time over a two-year period. This means that a worker could get a job, and then decide to take training to upgrade skills or obtain a General Equivalency Diploma (GED) while employed.

Each State would receive funds up to a perdetermined State target level based on its formula allocation for basic readjustment services. In turn, each substate grantee would also have a target level. States and substate grantees would be expected to spend their targets on a quarterly basis.

What States do not spend of their target each quarter would be retained in the overall pot of retraining money. This would allow us the flexibility to quickly retarget funds to areas of greatest need. However, when a State that did not spend all of its allotment in one quarter is suddenly faced with an emergency situation and needs more money, it could apply to the Secretary for additional funds.

The final $196 million of the funds is set aside for the Secretary's discretionary use in industry-wide and multi-State projects, mass layoffs, natural disasters, and other national activities and projects such as technical assistance, demonstration projects, and research.

Finally, let me call your attention to the linkage our bill would establish with the Unemployment Insurance system. Each State must establish a plan for linking the UI system to the readjustment system. The bill directs the Governor to set up procedures for early identification of UI recipients who are likely to need readjustment services. The Governor also must develop specific mechanisms that establish a connection between both systems early in the UI benefit period, and train and prepare UI and other staff in ways to make the linkage work effectively. In addition, UI recipients who are enrolled in training by the end of their 10th week would be eligible for income assistance equal to their UI benefit amounts that would be paid from worker readjustment funds until they complete training.

Mr. Chairmen, I know that there have been a number of worker readjustment proposals introduced in the 100th Congress, including Senator Metzenbaum's Economic Dislocation and Worker Adjustment Assistance Act, which also draws on the findings and recommendations of Secretary Brock's Task Force. While some features of our proposals differ, we are all trying to achieve the same results. We believe the Administration has developed an excellent proposal, and I am confident that we can work together for enactment of an effective worker readjustment proposal this year.

This concludes my prepared statement. I would be pleased to answer any questions.

Senator **Metzenbaum**. Thank you very much for your testimony, Mr. Semerad, and let me say that I particularly like that part where you talked about constructive dialogue and working with us, and I want you to know that, speaking for the Committee, that is exactly what we would like to do. We do want to work with you in order to bring about a bill that meets the problem, rather than have confrontation.

We are running late. I have noticed that two of my colleagues have joined us, Senator Harkin and Senator Adams, so I am just going to ask you one question in the interest of time.

Experts from government, business, the academy and organized labor agree that advance notification of plant closing is an essential element for a successful worker adjustment program.

The Administration's proposal calls for voluntary advance notice, but the evidence indicates that voluntary notice does not work. The General Accounting Office reported that 67 percent of blue-collar workers and 58 percent of white-collar workers in this country receive less than two weeks' notice before a plant closing or mass layoff.

In Massachusetts, which set up voluntary notice as a standard for receiving State financial assistance, there was no advance notice whatsoever for 50 percent of the plant closings in the last six months of 1985.

In the face of these findings, what specific evidence supports your view that voluntary advance notice will work? What data led you to believe that a $200 credit per employee against State unemployment compensation taxes will be an effective incentive for companies to provide advance notice?

Mr. **Semerad**. Mr. Chairman, our position is based on the fact that we do not think that mandatory advance notification is the best approach to take in the United States. With some of the data we heard about all these other countries that have it, I do not think we would want to make comparisons about the robustness of their economies versus ours and their ability to create jobs. So I do not think that is very good data if we are going to look at this country relative to others.

We think also that there is no comprehensive worker adjustment system now in the United States. We have never tried a national voluntary advance notification system—with a comprehensive approach—with the systems put into place that we are recommending in the Administration's bill—and that includes, of course, the rapid-response capability; the linkage with UI, a comprehensive system to provide the readjustment assistance, the capacity for the States to set up those voluntary labor-management committees; and the kinds of incentives we think would indeed encourage the best corporate behavior. There is no question that where we do have advance notification—we are talking about large companies here, large employers—that the interventions available do work quite well—not perfectly, but quite well.

I think Senator Quayle's concerns with the smaller employer lead one to have very serious doubts whether or not we should mandate this across-the-board.

Senator **Metzenbaum**. Thank you.

I am going to ask my colleagues if they can hold their questions to a couple of minutes, just so I can hear the rest of these witnesses today.

Senator Quayle.

Senator **Quayle**. I have only got three questions, Mr. Chairman.

Senator **Metzenbaum**. Answer them briefly, Mr. Semerad.

Senator **Quayle**. On Title I of S. 538, can you tell me what the major differences are between the Administration's readjustment program and S. 538?

Mr. **Jones**. Yes, Senator. Very briefly, there are about five or six differences. The eligibility requirements in S. 538 are extended to dislocated homemakers, which expands that pool by about two million people on an average annual basis.

The Senator's bill includes an open-ended benefit provision for those not covered by UI, which would increase the cost and decrease the services.

The service delivery system within the structure of the bill stops at the State level and makes no provision for local labor market input by business or elected officials.

The allocation of the funds is slightly different in that it is a grant system without necessary recapture provisions, and it does not contain the flexibility that we have established in our bill to move the money around wherever the dislocations may occur.

The Administration's bill has included provision for vouchers and training certificates and other alternative sources for trying to adapt individual worker demand to retraining needs.

Other than that and the other titles, as you point out, there is a fair amount of commonality between the two bills.

Senator **Quayle**. In the spirit of dialogue, which I concur with the Chair in trying to get at least Title I worked out, can you prioritize your concerns—which ones are the ones of major differences? On a scale of, say, one to ten, which are the big ones that we ought to be watching for?

Mr. **Jones**. Of the ones we have talked about, I do not think that you can separate them out for one particular reason, Senator. Several of those items impact how many people you can serve at what kind of cost. The Administration's bill taken as a whole will serve about 700,000 people nationally, and that is the majority of dislocated workers who are in need of services. Senator Metzenbaum's bill would only serve about 435,000 people, at least by our estimates, on an average annual basis, at roughly twice the cost.

Now, there is a trade-off, and it is an important one. Whether it is benefits or whether it is eligibility or whether it is the delivery system that impacts that, one has to make a decision on what your general goal is going to be and then which things are going to contribute or detract from that.

Senator **Quayle**. So all five or six of those issues you have mentioned are weighted about the same?

Mr. **Jones**. They are weighted about the same, and particularly those that impact costs and eligibility are going to shortchange that.

Senator **Quayle**. Okay, I hear you.

Mr. Secretary, I am struck by the breadth of your definition of "dislocation event." Do you have any estimate on how many such "dislocation events" occur every year?

Mr. SEMERAD. Senator, we do not have specific and detailed numbers on dislocation events. However, the Bureau of Labor Statistics data on manufacturing establishments would suggest that about 14,000 closings per year take place. But the estimate needs further refining and validation. BLS is indeed doing further work in this area which should give us a better fix down the road. But let me make it clear that we do not intend to include dislocations that are essentially seasonal, such as construction or in some resort areas or that kind of thing.

Senator QUAYLE. So do you see this readjustment assistance going into 14,000 different dislocation events?

Mr. SEMERAD. Well, I think that it could conceivably work out that way.

Senator QUAYLE. It could, and that would be the goal.

Mr. SEMERAD. Yes, sir.

Senator QUAYLE. You are looking at serving about 14,000 events.

Mr. SEMERAD. Bear in mind that our experience shows that about 43 percent of those dislocated need some type of assistance. And our figures of 700,000 and our budget numbers are driven by our experience with those people who actually need assistance.

Senator QUAYLE. So 43 percent—less than half would actually need assistance?

Mr. SEMERAD. Our experience would show that. And the capacity for rapid response would change the numbers of events and the numbers of people. But I think the culture of work would understand that this system was built up as a national priority, and it could alter the numbers.

Senator QUAYLE. Okay. One final question, Mr. Chairman.

Now, your readjustment assistance calls for early intervention, which I have strongly supported, and I felt that we ought to get in there earlier rather than later.

Many will make the argument that you cannot have early intervention unless you have mandatory notice. In other words, the earlier the better. So therefore, by implication, what you, the Administration, are recommending is in effect mandatory notification rather than the voluntary notification which you say that you are for.

How can you have it both ways? Can you really have early intervention early on in the process, without having notification? And if you have to have notification, isn't it going to have to be mandatory notification? That is the way the argument goes. And I want to know what leads you to the conclusion of voluntary notification.

Mr. SEMERAD. Senator, I am not sure that I would agree that our proposal mandates mandated plant closing. All we are saying is that——

Senator QUAYLE. No, I know it does not, but by implication.

Mr. SEMERAD. Well, even by implication——

Senator QUAYLE. You focus in early on, which everybody supports. If you have to have early on, that means during the time of employment, I would assume, and that means notification. So by implication what you are saying is that you really do need mandatory notification.

And unless you can give me some rationale that, yes, there may be some situations where you are going to have intervention that is going to be early on in the process, and in other cases it is going to be after they have laid off or after the plant has closed—I am just curious, because I think I am struck somewhat by the implication, but you are not testifying for what I think is somewhat a logical implication, and that is you are really for mandatory notification rather than voluntary.

Mr. **Semerad**. I think the implication is that we think advance notification is very helpful to the workers and the communities and saving the communities. I do not think the implication is that we are proposing or feel that it has to be mandatory.

We have got to change the work culture in this country. Our proposal is built around the retraining aspect that people will be prepared—our demographics are quite clear—we are going to need these good workers in different capacities. Our view is that if employers and the workers and the States and the communities can work together that the culture will change; that there are indeed incentives in here, and that sooner or later everybody will understand that they benefit.

There is not any argument here, I think, that the sooner we know of a layoff, a large layoff, the better we can deal with it and minimize that trauma to the worker and the community.

I think employers will have to learn, and different employers will react differently depending on the nature of their business and the nature of the kinds of work they do.

I think we have got to find a way, and I would respectfully urge the Committee to say that we need to put into place the same mechanisms, frankly—we ought to concentrate on the readjustment process, rather than an enforcement process and a long legal process that the mandatory notification would entail.

I think it will take some time. Why can't we put in the voluntary plant closing provision with the system and see how it works?

Senator **Quayle**. Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you, Senator Quayle. I might say that your line of questioning has convinced me that mandatory closing is worthwhile—I had not been convinced——

Senator **Quayle**. You did not listen—how about his answer, though?

Senator **Metzenbaum**. I thought his answer was that we need to have a cultural change, and somehow we are going to do this on sort of a philosophical basis, and we will get a state of mind worked out that will be great. I am afraid that there will be too many people unemployed before we reach that level.

Senator Simon.

Senator **Simon**. Just one question—and I regret my friend and colleague Senator Humphrey is no longer here. I heard his statement, and I have it here, that plant closing is a "Marxist economist's dream."

I read the Task Force report, appointed by the Secretary of Labor. While they were not able to agree on precisely what should be done legislatively on plant closing, there are very powerful arguments for plant closing there.

My question, Mr. Semerad—this group that the Secretary of Labor, Bill Brock, appointed—was this a group of Marxists they appointed to this Task Force?

Mr. **Semerad**. No, Senator.

Senator **Simon**. All right.

Senator **Metzenbaum**. A very good answer.

Senator **Simon**. I have no further questions. [Laughter.]

Senator **Metzenbaum**. Senator Harkin, we are happy to have you with us, sir.

OPENING STATEMENT OF SENATOR HARKIN

Senator **Harkin**. Thank you, Mr. Chairman. I am glad to be back, and I am sorry I had to leave for a little bit.

I, too, am very interested in this legislation because of dislocations that we have had in Iowa, not only from plant closings—Caterpillar, John Deere, Hormel, other meatpacking industries, and now, recently, Firestone Tire and Rubber. In some of the cases, we have had notification; in some, we have not. Recently, Firestone gave notification, and they would fall under this bill; they would fall under the six-month period of time. I think the same could be said true also of Caterpillar. I do not think Hormel did. So some do, and some do not.

It seems to me that is the problem you get into in this voluntary thing is that you have that kind of mish-mash thing, some do and some do not, and it would be nice to have a more uniform system where all industries in the State, regardless of whether they are meatpacking or whether they are heavy industry, would operate under the same kind of rules.

While I have been taking a closer look at the Administration's proposal, I think I see a lot of merit in it in terms of joining together the JTPA and the Trade Adjustment Assistance. I would point out that we just had a plant recently in Iowa that closed—or, actually, I should say is closing—and they have been designated as a victim of trade, so their people get trade adjustment assistance. But under the formula, they should have gotten $420,000, and they only got $80,000. So that is a problem.

I understand under your proposal of increased funding, that it would cover up to 700,000 workers a year. What percentage of the total do you think that covers under your proposal, under the 700,000.

Mr. **Semerad**. Well, we use roughly 1.5 million as our base; then took the experience factor of about 43 percent of those people needing some sort of assistance—and that could be from just counseling and job-matching assistance right up to more extended training—so we came up with basically the 700,000. That is really what we show, by our experience, the people that seek our help and that we need to address. And again, that is based on emphasis on training rather than extending benefits and keeping them out of the economy longer.

I think that the need here is to accelerate that reentry into the economy. We need those good workers.

Senator Harkin. Okay. Now, there may be arguments about the differences between your approach in terms of the assistance and in what we have in this bill. Those can be worked out; I mean, reasonable people can work those things out, I am sure, and I am sure we will work those out, because obviously, this Administration is doing something, also.

What I am wondering, though, is how about the other end of the bill, the notification end of it. The two can go along together, can't they? We can work out our differences on the assistance program and how we address that, but why wouldn't it also be beneficial to have the advance notice along with that?

Would you care to comment on that? I was looking through your testimony, and I did not get much of a flavor for that; I got more of a flavor for your approach on the assistance end rather than on the notification end of plant closings.

Mr. Semerad. Well, Senator, I do not know, in the interest of time—that was the first question out of the box from the Chairman, in terms of why we were opposed to the advance notification. But really, it boils down to the fact that we do not think it is a very good idea. We think it is probably not the best thing for our diverse economy.

We do not have a readjustment system in place, so we have never really tried in America a voluntary system nationwide that has the kinds of incentives, the kind of package, if you will, that we are proposing in our legislation.

And I think that because we are going to have on the positive side, whether it is voluntary or mandatory, the same kinds of systems put in place, I think we should put the systems in place in a voluntary system and see what can happen. I think we are taking the view that business is not going to cooperate. I am not so sure that that is true, and I would love to have us use our resources much more to the readjustment process rather than the enforcement process or the legal process that undoubtedly will follow.

Senator Harkin. It seems to me those government programs that have been successful in the past usually employ the carrot and stick approach.

Mr. Semerad. Yes, sir.

Senator Harkin. And what I hear you saying is you have got a lot of carrots, but no sticks. And it seems to me that this is the stick end of the carrot and stick approach, of having that kind of notification.

I guess it just bothers me that you leave a system out there with no real guidelines on notification. As I said, some plants may act, and they have in the past acted responsibly, given prior notification; others have not. And why penalize and punish those workers who happen to work for a plant that does not give that kind of notification, that maybe does not act responsibly? They should not be held to blame for that, and all of a sudden they are out, without the kind of planning that you need for this kind of assistance.

Mr. Semerad. Well, Senator, I think your concerns are very well-founded. I think that our package basically triggers the response at the State level that would tend to overcome some of those reservations that you have, but it would be more at the local level. It would also take care of agricultural workers who are out of work permanently, just as if they worked in a steel mill or in a mine.

I think what we are trying to do is trigger a series of related and interrelated systems, whether it is the U.I. system or the employment service or our training system, by adding this rapid response capability, adding this labor-management cooperation and consultation element. And I think that we will find that States will figure that out. It will become a part of our work culture. And I do not see that as a philosophical argument as much as I do that we are changing. Our economy is changing, and we cannot stop it, and we need to move with it to retain our competitiveness, and we are going to need all of these workers in this economy.

There are those workers who are left out. Clearly, more workers than not move on; they do make the adjustment. We need to work with those at greatest risk in the work force or out of the work force, and that is what we are endeavoring to try.

Senator **Harkin**. Thank you very much.

Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you very much, Senator Harkin.

Senator Adams.

OPENING STATEMENT OF SENATOR ADAMS

Senator **Adams**. Mr. Chairman, I will observe your admonition and not ask questions. I just would make the observation that you indicated that the work culture should shift—it seems to me we have a voluntary system in place now, and that we ought to give this cultural system a little shove in the direction of making it happen rather than observing what presently exists, because to me, a voluntary system is what we have got now, and it is not working.

Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you very much, Senator. I am very happy that you saw fit to join us. We are very pleased to have you.

And thank you very much, Mr. Semerad. Again, I will repeat what I said before. We want to work with you; we want to get this bill and put it to bed and roll on, because I think the American work force and the American economy and the American free enterprise system needs it.

Mr. **Semerad**. Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you.

Our next witnesses are Morton Bahr and Owen Bieber. I would like to ask—we have five more witnesses, and we are not going to be able to hear them all today. The question is, can any of them come back on the 26th, when we have the second portion of this hearing going forward. Senator Simon will be Chairman on that occasion. I know that Mr. Bieber and Mr. Bahr are both from out of the city, and so I cannot ask them to come back and will be happy to hear from you. But the other three witnesses, I am going to inquire of you as to that possibility.

Mr. Bieber.

STATEMENTS OF OWEN BIEBER, PRESIDENT, UNITED AUTO WORKERS INTERNATIONAL UNION, DETROIT, MI, ACCOMPANIED BY DICK WARDEN, LEGISLATIVE DIRECTOR; AND MORTON BAHR, PRESIDENT, COMMUNICATION WORKERS OF AMERICA, AFL-CIO, WASHINGTON, DC, ACCOMPANIED BY LOU GERBER, LEGISLATIVE STAFF

Mr. **Bieber**. Thank you, Mr. Chairman. I will try to read my opening statement very quickly.

We appreciate the opportunity that you have given us to share the views of the UAW on S. 538. I have with me today our Legislative Director, Dick Warden, and we ask that our prepared statement be included as part of the hearing record, and I will try to summarize it quickly.

Senator **Metzenbaum**. Without objection, your entire statement will be included in the record.

Mr. **Bieber**. On behalf of the one million active UAW members and the several hundred thousand others who have permanently lost their jobs through plant closings and layoffs, we wish to thank the Chairmen of both Subcommittees for holding this joint hearing on S. 538.

We commend you and your colleagues for introducing this very critical and important measure.

As you know, decisions to close or move a plant or to permanently cut back a work force can have far-reaching, profound impacts. Yet these decisions are usually made behind closed board room doors, beyond public scrutiny or control, based solely on corporate economic self-interest, and without adequate regard to the enormous economic and social costs which such decisions can impose on others.

As a trade unionist, Mr. Chairman, it is difficult for me ever to acknowledge that a plant may have to close. I know only too well the terrible human costs. Yet I recognize that in a dynamic economy, change is essential, and some plants may close.

But in American manufacturing industries today, I am convinced that far too many plants are closing unnecessarily. Moreover, even when a plant's closing may be justified, the tremendous economic and social costs it imposes should be shared equitably.

Government has a duty to inject social responsibility into this process and protect workers and communities against the devastating consequences of economic change.

General Motors announcement that it will close 11 plants employing 29,000 workers is only the most visible example of what is happening to millions of workers throughout the economy. Recessions, import penetration and technological change all have taken a severe toll in jobs. According to the Bureau of Labor Statistics, each year, 1.5 million workers lose their jobs in plant closings or permanent layoffs.

The most extensive government study to date shows that no region, industry, or sector of the work force is spared. Contrary to popular misconceptions, the problems of economic dislocation are not confined to northern industrial States.

S. 538 represents an important first step towards a national policy to prevent or minimize the harmful consequences of economic dislocation. Under that bill, the surprise of sudden plant closings and permanent layoffs would be prevented by requiring employers to provide advance notice ranging from 90 to 180 days, depending on the number of employees affected by the closing or substantial layoff. Workers would also have an opportunity to discuss the decision, since employers would be required to consult with employees about alternatives to a closure or layoff. Where alternatives could not be found, there would be some time and a program to help workers and communities adjust to the permanent job loss.

Notice, mandatory consultation, and an adjustment program are an important down payment toward a national policy we so badly need to deal with economic dislocation. Indeed, we would prefer that the period of notice and required consultation be increased beyond the three to six months currently being proposed. Twenty years ago, no less an authority than former Secretary of Labor George Shultz stated—and I quote him—"There should be at least six months' and preferably a year's advance notice."

Moreover, workers who permanently lose their jobs need adequate levels of severance pay, health insurance and other fringe benefit continuations, transfer rights, mortgage/rent assistance and relocation assistance.

In addition, it would be desirable to develop an early warning system which would allow sources of potential dislocation to be identified early, before they become a reality, and which would trigger appropriate action to prevent dislocation. We are hopeful that it may be possible for some of these concerns to be discussed as S. 538 makes its way through the legislative process.

I would point out that in a recent Pastoral Letter issued by the U.S. Conference of Catholic Bishops, that the rationale for legislation such as S. 538 was clearly stated.

It is not only labor leaders and religious leaders who offer arguments in support of advance notice. The report of the Secretary of Labor's Task Force on Economic Adjustment and Dislocation, President Reagan's Commission on Industrial Competitiveness, and the Office of Technology Assessment and business organizations such as the Committee for Economic Development and the Conference Board, have all stressed the importance of advance notice.

Although there is widespread agreement on the importance of advance notice, very few workers receive adequate notice before they lose their jobs.

According to the General Accounting Office, fewer than one in ten blue-collar workers receives more than 90 days' notice of a plant closing or mass layoff. White-collar workers get an average of two weeks' notice, while blue-collar workers receive an average of only seven days. And it should be pointed out that blue-collar workers in non-union establishments receive an average of two days' advance notice.

The GAO study also shows that very few workers receive placement or financial assistance after they lose their jobs. Only one in three blue-collar workers receive severance pay or extension of health insurance. Only one in five blue-collar workers is offered job search assistance, and only one in ten, a transfer option or career counseling.

Finally, I want to state for the record my opposition to several aspects of the Administration's worker readjustment proposal. In its proposal, an employer would receive a $200 credit per employee against State unemployment compensation taxes if advance notice is given before a plant closing or mass layoffs. I believe this approach is misguided. Why should we take money away from an already underfunded unemployment insurance system—in 1986, only one-third of the unemployed received unemployment insurance benefits—and use that money as an incentive to entice employers to do what they should do in the first place?

We strongly oppose folding the Trade Adjustment Assistance Program into the Worker Adjustment Program, which has also been proposed by the Administration.

I think notification, consultation and the adjustment assistance proposed by S. 538 are essential beginnings of a badly-needed national policy and should be adopted without unnecessary delay.

Mr. Chairman, in the interest of time, let me say we appreciate very much this opportunity to share our views with your two Subcommittees, and of course, I will be pleased to respond to any questions which you may wish to raise.

Senator **METZENBAUM**. Thank you very much, Mr. Bieber.

[The prepared statement of Mr. Bieber and responses to questions submitted by Senator Metzenbaum follow:]

STATEMENT OF
OWEN BIEBER, PRESIDENT
INTERNATIONAL UNION, UAW
BEFORE THE
SUBCOMMITTEE ON LABOR AND
SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY
OF THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE
ON
S. 538 – ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

MARCH 10, 1987

Mr. Chairman, on behalf of one million active and currently employed UAW members and the several hundred thousand members who have permanently lost their jobs through plant closings and layoffs, I wish to thank the Chairmen of both Subcommittees for holding this hearing on S. 538. I appreciate this opportunity to submit the UAW's views on S. 538, the proposed Economic Dislocation and Worker Adjustment Assistance Act, and to support the advance notice, consultation and adjustment assistance provisions of this bill.

You are well aware of the personal misery for workers and their families, the economic and social costs for communities, and the general loss to the economy created by corporate decisions that result in permanent dislocation. Decisions to close or move a plant, or to permanently cut back a workforce, have far-reaching, profound impacts. Yet these decisions are often made behind closed board room doors, beyond public scrutiny or control, based solely on corporate economic self-interest, and without adequate regard to the enormous economic and social costs which such decisions can impose on others.

As a trade unionist, Mr. Chairman, it is difficult for me ever to agree that a plant must close. I know only too well the terrible human cost. Yet I recognize that in a dynamic economy, change is essential and some plants may close. In American manufacturing industries today, however, I am convinced that far too many plants are closing needlessly. Moreover, even when a plant closing may be justified, the tremendous economic and social costs it imposes should be shared equitably. The government has a duty to exercise social responsibility and protect workers and communities against the devastating consequences of economic change.

Instead of helping, in far too many cases government policy actually makes the problem worse. Examples of harmful policies include a federal tax code that subsidizes corporate decisions to export U.S. workers' jobs, and international trade policies which are weak and ineffectively enforced.

Impact on UAW Members Has Been Devastating

General Motors' announcement that it will close 11 plants employing 29,000 workers is only the most visible example of what is happening to thousands of UAW members in auto, agricultural implement, construction machinery, the parts supplier industry, and millions of other workers throughout our economy.

The hardship faced by workers who lose their jobs was documented by a study of unemployed Michigan auto workers conducted by the Social Welfare Research Institute of Boston College. More than 100,000 Michigan auto workers experienced permanent or indefinite layoff between 1979 and 1982. By the summer of 1984, 30 percent of those surveyed had not been recalled. Among those still on layoff, more than half were unemployed or working part-time.

The drop in income was drastic. By the last month of layoff, average weekly income for an individual fell 61 percent. Workers not only experienced a major decline in income, but also were forced to use up their life savings. Among those who had any savings, more than 40 percent used them up entirely while unemployed.

To make matters even worse, at a time when health insurance coverage was desperately needed, coverage was lost. Almost one-third of the auto workers surveyed had no health insurance coverage whatsoever at some time during their layoff.

Some workers and their families did not seek needed medical care because they could not afford it.

As for those who managed to find another job, 65 percent were in nonunion jobs. Their wages were on average 19 percent below their previous wage level and fringe benefits had been dramatically reduced. Only 63 percent of those reemployed were receiving health insurance.

Dislocation is a National Problem

It is obviously not just auto workers who are suffering. The number of workers who have been victims of plant closings and permanent layoffs is enormous. Recessions, import penetration and technological change all have taken a severe toll of jobs. According to the Bureau of Labor Statistics (BLS), each year 1.5 million workers lose their jobs in plant closings or permanent layoffs.

The most extensive government study to date, undertaken by the Bureau of Labor Statistics, shows that no region, industry, or sector of the workforce has been spared. Contrary to popular misconception, the problems of economic dislocation are not confined to northern industrial states. In fact, from 1981 to 1986, the region with the highest rate of dislocation was the South in the area encompassing Kentucky, Tennessee, Alabama, Texas and Oklahoma. Other regions most heavily affected are the West and Midwest (see Table 1).

Nearly half of displaced blue-collar workers were jobless more than half a year, with one in five experiencing more than two years without work. Displaced black workers are unemployed twice as long as other displaced workers.

Besides the financial burden of lengthy unemployment, most displaced workers are forced to take jobs at lower pay and often are only able to find part time work. Blue-collar workers, both male and female, earn 16 percent less in their new jobs. Nearly one-third took pay cuts of more than 25 percent. Those forced into new occupations or industries took pay cuts of 25 to 30 percent. Older workers, minorities and those less educated are especially hard hit.

At a time when plant closings and economic dislocation have increased, the federal government has cut back on adjustment assistance. From 1978 to 1986, federal expenditures (in constant dollars) for training and employment dropped 68 percent. During this same period, the number of unemployed increased from 6.2 million in 1978 to 8.2 million in 1986. To understand the actual impact of the budget cuts on the ability to provide employment and training opportunities, it is necessary to consider the resources available per unemployed person. In 1978, the federal budget provided almost $1,260 per unemployed person for employment and training. By 1983, this amount had fallen to $262. This represents a 79 percent decline in resources per person. According to the Office of Technology Assessment, the level of federal financing today serves only 5 percent of all dislocated workers.

Lack of National Policy Has Put Burden on Collective Bargaining

In the absence of a responsible public policy, much of the burden for dealing with plant closings and permanent job loss has fallen to the labor movement. In the case of plant closings with major employers, the UAW has been able to mitigate somewhat the consequences by negotiating a variety of important job and income security provisions. At some major companies we've been able to negotiate joint union-company training programs to help dislocated workers qualify for and find new jobs.

In addition, the UAW has established community services committees, with trained union counselors, in local unions throughout the country to help members cope with personal and emotional problems. If there has been sufficient notice, counselors are able to provide an assessment of the short-term and long-range needs of affected workers on such matters as family budget adjustments, mortgage foreclosure, and family counseling.

Although our efforts have given some help to UAW members who permanently lost jobs, it isn't enough and does not reach everyone who needs help. Seldom can we negotiate sufficient protection to enable the worker to make an orderly, low-trauma transition to a new job. In many of our collective bargaining agreements, the company's economic condition has not even permitted limited protections. Moreover, the millions of unorganized workers in our country do not have the benefit of a union contract.

The problem of economic dislocation goes beyond what can be accomplished through collective bargaining. Addressing the problem requires comprehensive governmental action. A truly comprehensive approach to plant closings and economic dislocation would entail an active trade policy as reflected in S. 497, S. 498 and S.499. These bills propose specific steps to reduce the ballooning trade deficit and define the denial of workers' rights abroad as an unfair trade practice. We also need an industrial policy that has as its goal a diversified, balanced, fully-employed economy.

S. 538 An Important Step

S. 538, the proposed Economic Dislocation and Worker Adjustment Assistance Act, represents a necessary step toward a national policy to prevent or minimize the harmful consequences of economic dislocation. Under S. 538, the surprise of sudden plant closures and permanent layoffs would be prevented by requiring employers to provide advance notice ranging from 90 to 180 days depending on the number of employees affected by the closing or layoff. Workers would also have an opportunity for input into the decision since employers would be required to consult with employees about alternatives to a closure or layoff. Where alternatives cannot be found, there would be some time and an adjustment program so workers and communities can adjust to the permanent job loss.

Based upon the recommendations of Secretary of Labor Brock's Plant Closing Task Force, S. 538 provides for the creation of a federal displaced worker unit in the Department of Labor. This unit would coordinate and expand education, training and reemployment assistance. The bill also requires that each state set up rapid response teams. Upon notice of a closing or layoff, the rapid response team would visit the plant and help the employer and workers prepare an adjustment program that would provide counseling, testing, job search training and vocational and classroom training. Income support, beyond the 26 weeks of unemployment insurance, would be provided to those in training programs. The bill would allocate $980 million to fund the program. This is four times the amount of funding currently provided for adjustment assistance.

Notice, mandatory consultation and a rapid response adjustment program constitute an important down payment toward a national policy we so badly need to deal with economic dislocation. Indeed, we would prefer that the period of notice and required consultation be increased beyond the three to six months currently being proposed. Twenty years ago no less an authority than former Secretary of Labor George Shultz stated, "there should be at least six months' and preferably a year's advance notice." We know that most companies make their decisions to close a plant or permanently cut back employment months or often years in advance. Finding alternatives to such decisions made so long in advance often cannot be developed within three months. Furthermore, if alternatives cannot be found, a longer period of notification will increase considerably the chances that workers will be able to make a less painful adjustment to their job loss.

Moreover, the full range of problems growing out of economic dislocation cannot be solved through notification and consultation requirements. Workers who permanently lose their jobs need adequate levels of severance pay, health insurance and other fringe benefit continuation, transfer rights, mortgage/rent assistance, and relocation assistance. Circumstances of older workers mandate special protections.

Communities need assistance to offset tax losses and to meet increased social service needs. These are just some of the problems growing out of dislocation. In addition, there is need to develop an early warning system which will allow sources of potential dislocation to be identified early -- before it becomes a reality -- and which will trigger appropriate action to prevent dislocation. We are hopeful that it may be possible to discuss some of these concerns as S. 538 makes its way through the legislative process.

S. 538 proposes three demonstration programs. The first project would authorize worker training loans of up to $5,000 at below market interest rates. The second project would authorize selected states to allow dislocated workers who wish to start their own business to continue to receive unemployment insurance benefits. The third project would authorize public works employment to communities where there is high unemployment.

Mr. Chairman, we are opposed to the first demonstration project. Providing low interest loans to workers to pay for training is not an adequate substitute for a well-funded federal training policy, which provides training and education for dislocated workers.

While we do not oppose the second project, I do question whether many dislocated workers have the funds necessary to start their own businesses. In principle, we support the third project of public job creation, but I do not believe we should limit pay to the minimum wage or 10 percent above welfare or unemployment insurance benefits.

Administration Plan Prompts Concerns

I also want to discuss my concerns about aspects of the Administration's worker readjustment proposal. In its proposal, an employer would receive a $200 credit per employee against state unemployment compensation taxes if advance notice is given before plant closings or mass layoffs. We should not take money away from an already underfunded unemployment insurance system (in 1986 only one-third of the unemployed received unemployment insurance benefits) and use it as an incentive to entice employers to do what they should be doing as a matter of simple human decency.

Experience shows that incentives don't work. In Massachusetts, firms which receive financial assistance from state agencies must agree to accept certain voluntary standards of corporate behavior which include advance notice of plant closings. Yet data from the BLS show that in fully one-half of all plant closings in Massachusetts in the last six months of 1985, no advance notice was given. Clearly we need legislation requiring advance notice.

We strongly oppose another proposal in the Administration's package. That is the recommendation that trade adjustment assistance be folded into the Worker Adjustment Program. At a time when the trade deficit is at record levels it makes little sense to eliminate the only program that compensates workers who have lost their jobs due to government trade policy.

Notice with Consultation is Humane and Economically Efficient

In the recent Pastoral Letter issued by the U.S. Conference of Catholic Bishops, entitled Catholic Social Teaching and the U.S. Economy, the rationale for legislation such as S. 538 was clearly stated:

> "When companies are considering plant closures or the movement of capital, it is patently unjust to deny workers any role in shaping the outcome of these difficult choices ... The capital at the disposal of management is in part the product of the labor of those who have toiled in the company over the years, including currently employed workers. At a minimum, workers have a right to be informed in advance when such decisions are under consideration, a right to negotiate with management about possible alternatives, and a right to fair compensation and assistance with retraining and relocation expenses should these be necessary."

Nor is it only labor leaders or religious leaders who offer arguments in support of advance notice. The report of the Secretary of Labor's Task Force on Economic Adjustment and Dislocation stresses that "advance notification is an essential component of a successful adjustment program." The Office of Technology Assessment states:

> "The best time to start a project for displaced workers is before a plant closes or mass layoffs begin: advance notice makes early action possible -- although it does not guarantee it. Some of the advantages of early warning are 1) it is easier to enroll workers in adjustment programs before they are laid off; 2) it is easier to enlist managers and workers as active participants in displaced worker projects before the closing or layoff; 3) with time to plan ahead, services to workers can be ready at the time of layoff, or before; and 4) with enough lead time, it is sometimes possible to avoid layoffs altogether."

President Reagan's own Commission on Industrial Competitiveness clearly recognized the importance of early notification of plant closings and other permanent job loss and the serious harm caused by failure to provide it. The Commission recommended that:

> "Where possible, early identification of the worker to be displaced should be encouraged. Delay in identifying these individuals directly contributes to prolonging the adjustment process -- a process already made difficult by the individual's denial of the problem, lack of job search skills, and absence of alternative job or occupation at a comparable wage. Employers should be urged to provide early notification of plant closings, and joint public-private efforts providing prelayoff assistance (such as those authorized by JTPA) should be emphasized."

Recent reports by business organizations such as the Conference Board and the Committee for Economic Development also point out the importance of advance notice:

> "Companies should provide as much notice as possible of decisions affecting jobs, particularly in cases of plant closings, work transfers, or automation. Advance notice allows employees the time to adjust, and management the time to plan and implement business moves in a way that minimizes hardship. Companies should also take steps to notify the local community and state agencies of pending plant closings in order to allow time for a coordinated response. (Committee for Economic Development, Work and Change: Labor Market Adjustment Policies in a Competitive World, 1986)

> "Both survey and interview participants note that advance notice is beneficial to employees and is an essential element in a plant closure program ... Notice is also critical because a functioning plant is, perhaps, the program's single most important resource." (Conference Board, Company Programs to Ease the Impact of Shutdowns, 1986)

Few Workers Receive Advance Notice or Placement Assistance

Despite widespread agreement on the importance of advance notice, very few workers receive adequate advance notice before they lose their jobs. According to a comprehensive survey by the General Accounting Office (GAO), less than one in ten blue-collar workers receive more than 90 days notice of a plant closing or mass layoff. The GAO survey found that 30 percent of employers gave no individual notice to blue-collar workers and another 34 percent gave two weeks or less. White-collar workers get an average of two weeks notice while blue-collar workers receive an average of only seven days. Blue-collar workers in nonunion establishments receive an average of two days advance notice (see Table 2).[1]

The GAO study also shows that very few workers receive placement or financial assistance after they lose a job. Only one in three blue-collar workers receive severance pay or extension of health insurance. Only one in five blue-collar workers is offered job search assistance and only one in ten a transfer option or career counseling (see Table 3).

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[1] Despite claims of employers that advance notice is an increasingly common practice, evidence indicates that the percent of workers receiving less than two weeks' notice has shown only the most limited improvements in over 50 years. In 1930 the National Industrial Conference Board issued a study titled Lay-off and its Prevention. Acccording to this study in 1930, 79% of industrial workers received less than two weeks' advance notice. In 1983-84 according to the GAO, 64% of blue collar workers received less than two weeks' notice.

Mr. Chairman, despite clear evidence that voluntarism isn't working, it can be expected that some of those in the business community will argue against mandatory notice. In the past, opponents have argued that each business is unique and that a mandated notice requirement does not recognize that diversity. They further have argued that an advance notice requirement will cause business to lose key employees and access to credit. Others have complained about a fear of sabotage or reduced work effort.

These claims are unfounded. The "each business is unique" argument is a rationale for flexibility in the administration of a notice requirement and not an argument against a notice requirement per se. The fear of losing key employees can be handled by means of "stay bonuses" or other incentives to employees.

Regarding loss of access to credit, it is difficult to believe that lenders are not already fully aware of the financial status of their borrowers. Moreover, the GAO study points out that less than one in ten establishments experienced a bankruptcy or financial reorganization prior to a closure or layoff. A financial emergency is the cause of a relatively small proportion of all business shutdowns or permanent layoffs.

Fear of sabotage or falling productivity after notice is given is also unfounded. The Conference Board, after studying six closings in great detail, commented: "All industrial plants studied noted productivity improvements in the period following the closure announcement."

The real reason most companies don't give advance notice, and the reason they are opposed to a notice requirement, is that they don't want to face pressure from workers and communities. Yet, it is not proper behavior to intentionally withhold information simply because a corporation wishes to avoid public scrutiny of its decision, or public pressure to cushion the impact of that decision. Such behavior has no place in a democratic society.

Almost every other industrial democracy already has plant closing legislation stronger than S. 538. And yet, the hemorrhaging of American jobs to the foreign subsidiaries of the same companies complaining about this legislation continues unabated. Companies which shift U.S. jobs to countries with far tougher plant closing laws do not deserve to be taken seriously when they complain that a notice requirement such as that in S. 538 would be intolerable here.

Alternatives Can Be Found When Workers Are Allowed Input

Advance notice, followed by a period in which workers can offer alternatives to a shutdown, can prevent a plant from closing.

One such case, which we've reported on at other times but deserves mention here, involved General Motors. In the summer of 1982, General Motors announced that it would close its Rochester Products Division in Tuscaloosa, Alabama. According to GM, the plant was no longer profitable. Rather than accept the closure as the only course of action, the local union immediately began working on ways to save the plant. The University of Alabama joined in this effort, and together with the UAW and GM, became part of an innovative three-year tripartite agreement to save the Tuscaloosa plant from closing.

Under the agreement, methods were jointly developed for lowering the plant's operating costs. Just eight months into the project, the cost savings' target was achieved. Shortly thereafter, GM announced plans for a $14 million investment in new equipment for the plant.

Another example of a plant saved from closing involved Detroit Forge, a plant of the Chrysler Corporation. The plant was going to close in 1982 unless large-scale physical conversions were made to the facility. UAW skilled trades workers responded by developing a plan for renovation and conversion which they proposed doing themselves. The company agreed to the plan and the skilled trades workers set out to modify forge presses, rebuild machinery, and renovate buildings. The entire job of renovating was done while production was kept running in the rest of the facility.

The Tuscaloosa and Detroit Forge plants are concrete examples that there are alternatives to plant closings and permanent layoffs when concerned parties commit themselves to work together. The successful efforts to save GM's Rochester Products Division and Chrysler's Detroit Forge plant show that a big corporation can make a plant closing decision based on incorrect or incomplete information and without adequately considering alternatives. It shows that some plants slated for closing are, in fact, viable. In the absence of a public policy requiring advance notice and consultation, however, the opportunity to save troubled but potentially viable plants is available only in a minority of cases. Such outcomes should not be left to chance. The notification and consultation requirements proposed by S. 538 would provide a far greater opportunity than presently exists to assure that these opportunities can be investigated.

The Time to Act is Now

Notification, consultation and the adjustment assistance proposed by S. 538 are essential beginnings of a badly needed national policy. They should be adopted immediately. For more than a decade, we have been making the case for plant closing legislation. The business community, often while recognizing the importance of advance notice, has always opposed plant closing legislation promising that they would provide notice and adjustment assistance on a voluntary basis. Nonpartisan studies by the GAO and BLS now demonstrate conclusively what we have always believed: Workers receive little notice of plant closings and few receive placement or financial assistance in the adjustment process.

In the last Congress, a mild plant closing bill was introduced in the House of Representatives. The Secretary of Labor urged that the bill be defeated pending his appointment of a task force to study the problem. The task force has issued its report. In the words of the task force report:

> "Worker displacement is a problem that will not simply disappear if nothing is done... The problem is of sufficient magnitude and urgency that it demands an effective coordinated response with special priority by both the public and private sectors."

Mr. Chairman, S. 538 is an important first step in addressing this problem. The UAW strongly supports the advance notice, consultation and adjustment assistance provision of this important legislative proposal, and we commend you and your colleagues for introducing it. We are grateful to both Subcommittees and the two Chairmen for giving us the opportunity to share with you the views of the UAW on this critical legislative issue.

* * *

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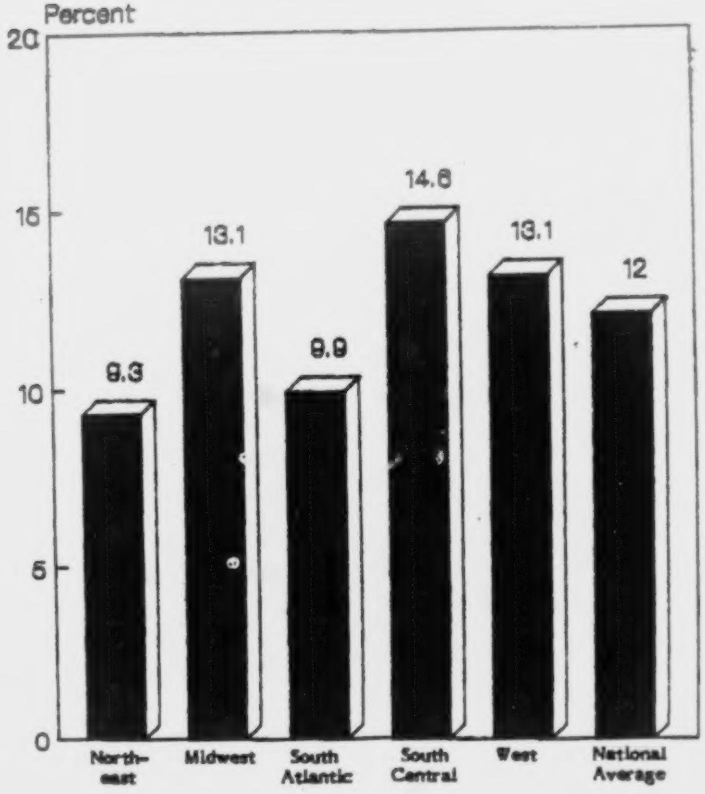
Table I

Rates of Dislocation by Region*
1981-1985



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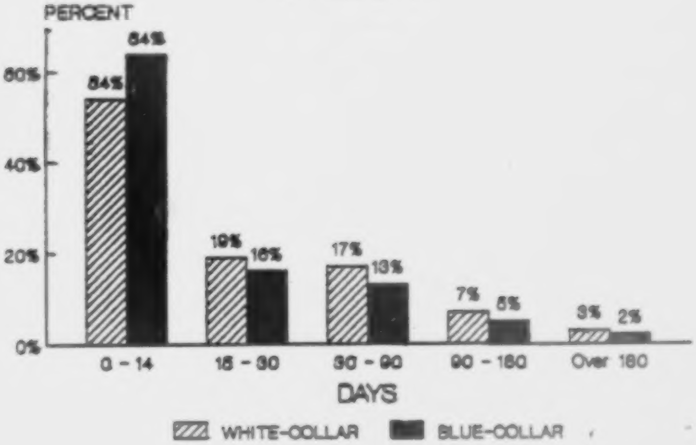
* The rate of dislocation represents the percentage of full-time workers displaced between 1981-1985.

SOURCE: Bureau of Labor Statistics

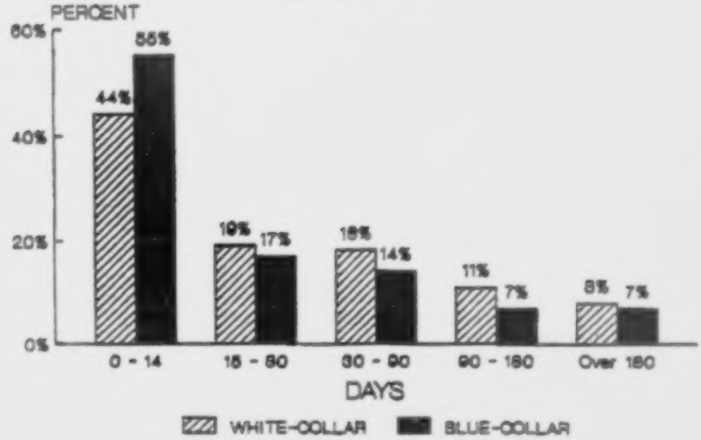
Table 2

PERCENT OF ESTABLISHMENTS PROVIDING ADVANCE NOTICE*

Specific Notice



General Notice



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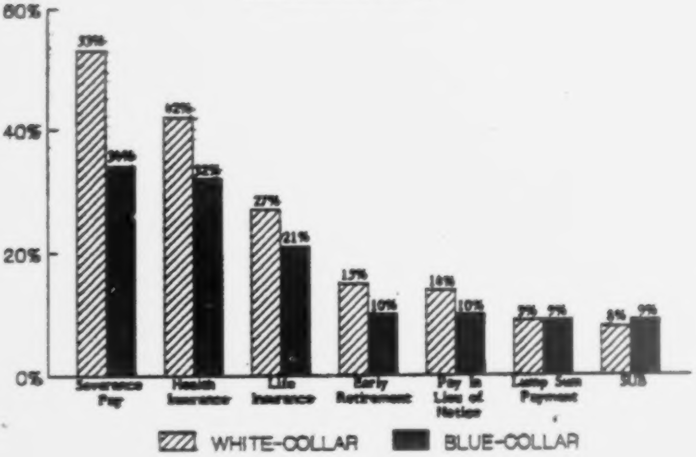
* The GAO study defined two kinds of advance notice — general and specific. General advance notice is intended to provide workers and the community with advanced warning but does not specify the exact date or the particular workers to be affected. A specific notice, on the other hand, informs workers that their employment will be terminated on a specific date.

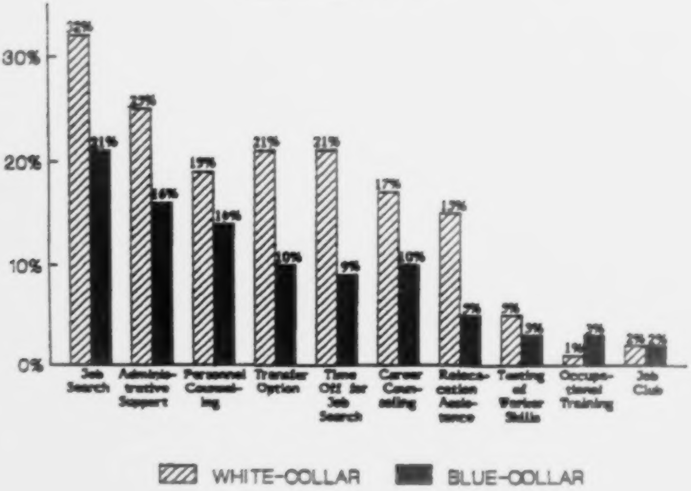
Table 3

PERCENT OF ESTABLISHMENTS OFFERING FINANCIAL AND PLACEMENT ASSISTANCE

Financial Assistance



Placement Assistance



SOURCE: General Accounting Office.

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

OWEN F. BIEBER, PRESIDENT   RAYMOND E. MAJERUS, SECRETARY-TREASURER

VICE PRESIDENTS
BILL CASSTEVENS • DONALD F. EPHLIN • ODESSA KOMER • MARC STEPP • STEPHEN P. YOKICH

March 25, 1987

Mr. Al Cacozza
Counsel, Labor Subcommittee
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510-6300

Dear Mr. Cacozza:

This is in response to your letter of March 16, 1987.

The following are answers to Senator Metzenbaum's two questions concerning my statement before the Labor Subcommittee hearing on worker dislocation on March 10, 1987:

1. Consultation is important because if given a chance workers can offer alternatives to a shutdown. As I said in my statement -- I mentioned a General Motors plant in Tuscaloosa, Alabama and Detroit Forge, a plant of the Chrysler Corporation — in the UAW we've had several cases where plants were scheduled to close but after consulting with workers, plans were developed which saved the plants. The fact is that some plants are slated for closing that are potentially viable. In the absence of a public policy requiring advance notice and consultation, however, the opportunity to save troubled but potentially viable plants will be lost in many cases.

   Even if alternatives to a closing cannot be found, consultation is needed to assure that company, worker and community representatives work together to provide timely and effective adjustment assistance to displaced workers.

2. The evidence indicates that advance notice and consultation do not hurt productivity. The Conference Board after studying six closings in great detail noted: "All industrial plants studied noted productivity improvements in the period following the closure announcement." I have not seen any evidence that advance notice and consultation contribute to financial instability. Moreover, as the General Accounting Office has pointed out, dire financial emergency is the cause of only a small proportion of all business shutdowns or permanent layoffs.

Sincerely,

Owen Bieber

Owen Bieber
President

OB:mld
opeiu494/DS

cc: Senator Metzenbaum

Senator **Metzenbaum**. Mr. Bahr, we are very happy to welcome you here this morning. It is nice to have you with us.

Mr. **Bahr**. Thank you, Mr. Chairman and members of the Committee.

I have with me Lou Gerber, a member of CWA's Legislative Staff.

I appreciate the opportunity to present the views of CWA and the 700,000 workers whom we represent. For too long, the United States has lacked a comprehensive strategy for dealing with the growing problem of business closings and mass layoffs.

As a result, two million Americans lose their jobs permanently each year, due to companies either shutting their doors or engaging in large-scale dismissals.

The irony of the rush to close plants and lay off employees is that only a small percentage of such business terminations involve bankruptcy or financial insolvency. In many cases, already successful companies are simply shutting one facility and moving to a new location in pursuit of greater profit.

A false myth holds that business closings are a "rust belt" or Northeast/Midwest phenomenon. In a recent year, however, the "sun belt", high-tech State of California lost the most jobs due to company shutdowns. Similarly, the "sun belt" State of North Carolina suffered the most plant closings.

In the case of workers in the telecommunications industry, the skilled craftspersons who have permanently lost their jobs are the cream of the American work force. Yet, even wage-earners with the protection of a strong union contract can be suddenly transformed into vagabonds who drift into the backwaters of American society due to the economic upheaval caused by the loss of a job.

Mr. Chairman, the MCI Corporation, the nation's second-largest long-distance company, recently announced a nationwide mass layoff that provides a chilling case study demonstrating the need for remedial Federal legislation.

Three weeks before Christmas, MCI abruptly dismissed 2,600 employees—about 15 percent of its work force.

In Southfield, Michigan, a suburb of Detroit, 200 MCI sales representatives experienced the worst aspects of a sudden business closing. On Tuesday, December 2nd, the entire MCI work force at Southfield was told by management to report the next day to one of six motels in the area, rather than to come to work, with no explanation for the deviation from normal procedure. When the employees assembled at the six scattered sites the next day, MCI managers informed them that they no longer had jobs as of that moment. The workers were paid on-the-spot and instantly terminated.

Of special interest—the employees at the Southfield facility had close ties to our union. The majority of the MCI sales representatives had signed authorization cards for union representation elections, and CWA had filed a request with the NLRB for such an election ten days before the workers' jolting dismissal. The election would have been the first vote for a union ever conducted involving MCI employees.

Mr. Chairman, CWA commends you and the other sponsors of S. 538 for offering a coordinated approach to the problem of business closings and mass layoffs.

It is common for a new business entering the community to meet with community leaders. Plans as to how the new business can benefit the community are discussed. There is a lot of labor-management-community cooperation. Why not the same process when the business leaves that community?

It is important to be aware that your landmark legislation does not give workers and their unions any veto power forbidding a business from closing. There is no obligation for an employer to keep an ailing facility open. Our experience is that advance notice is absolutely critical to the success of a retraining and relocation program.

I would like to share with this Committee two experiences. In our collective bargaining in 1986, CWA and AT&T agreed to the establishment of a jointly-owned nonprofit corporation called the Alliance for Employee Growth and Development. In Springfield, Massachusetts, the company has given us a one-year notice of the closing of the overseas telephone operator facility where 185 women are employed. With the advent of this early notice and the arrival of the Alliance on-the-scene, with nine months still to go, 30 percent of those 185 employees are already placed in other jobs, and there will be a certainty that not a single one of those employees will be laid off and be on unemployment compensation.

To contrast that, in a Western Electric location in Minneapolis, where the contract required a one week's notice, when the Alliance appeared in Minneapolis, with two days before the layoff, all they found was an angry, disinterested laid off work force. It took four weeks, while people were unemployed, while the family upheaval took place, before the Alliance could get the interest of one-half of those laid off people. So the advance notice is absolutely critical.

In addition to the advance notice requirement, the legislation requires a second significant component. This component implements the recommendations contained in the report issued by the Task Force appointed by the Secretary of Labor to examine this very problem.

Senator METZENBAUM. Can you wind up, Mr. Bahr?

Mr. BAHR. Yes, Senator. We fully support the Task Force recommendations. The bill would create a Displaced Worker Unit in the Department of Labor, that we believe is absolutely essential.

Let me conclude, Mr. Chairman, by calling to your attention that my Union is joining the United Auto Workers and several other unions in launching a nationwide campaign to raise these issues to the front burner of public awareness and debate. We are calling this "Jobs with Justice in America."

"Jobs with Justice in America" means several things to us. America's labor laws have not significantly changed in nearly 30 years, while at the same time, our economy has been going through drastic change. Our trade policies clearly do not reflect the new global economy in which American workers now compete. Business closings and massive layoffs have created greater fear and job insecurity among workers and their families than at any other time since the Great Depression.

Throughout the campaign, we hope to expose the untold story of the human impact these very serious problems are having on working people.

In conclusion, CWA strongly believes that the Economic Dislocation and Worker Adjustment Assistance Act would help give the competitive edge back to America.

We thank you for the opportunity to appear here today, and we wish you success in your deliberations and urge quick passage of this legislation.

[The prepared statement of Mr. Bahr and responses to questions submitted by Senator Simon follow:]

Statement of
Morton Bahr, President
Communications Workers of America, AFL-CIO
Before the United States Senate
Subcommittee on Labor
and the
Subcommittee on Employment and Productivity
March 10, 1987

The Communications Workers of America represents nearly 700,000 workers employed in the high technology and public service sectors of the economy.

Our Union strongly supports legislation to assist dislocated wage earners and provide notice and consultation before a company shuts its doors.

For too long, the United States has lacked a comprehensive strategy for dealing with the growing problem of business closings and mass layoffs.

As a result, two million Americans lose their jobs permanently each year due to companies either padlocking their gates or engaging in large-scale dismissals. Indeed, during the five-year period between January, 1981 and January, 1986, an estimated 10,800,000 workers were sidelined in a manner that suggested their job losses would be permanent. More than 5,000,000 of these wage earners had accrued at least three years of experience with the businesses that let them go.

Most disturbing, a recent study by the General Accounting Office revealed that blue-collar workers receive on average a mere seven days' notice before their companies bolted their doors and displaced them. The same study disclosed that blue-collar wage earners in unionized establishments got an average of two weeks notice before being permanently laid off, compared to only two days notice in non-union companies. The survey found that one in four workers received no advance notice at all, learning of their termination the same day they lost their jobs.

The irony of the rush to close plants and lay off employees is that less than 10 percent of such business terminations involve bankruptcy or financial insolvency. In many cases, already successful companies are simply shutting one facility and moving to a new location in greedy pursuit of greater profit.

CWA commends the sponsors of this bill for offering a coordinated approach to dealing with this serious problem affecting tens of thousands of American workers. Most significantly, we appreciate that the authors of the legislation have adopted the recommendations of Secretary Brock's task force which call for a program of services to dislocated workers.

The worker adjustment services incorporated in S.538 take this measure beyond simply requiring plant closing pre-notification and answer the question of what do we do after the plant has closed. Of course, not all workers are employed in plants. Many work in offices and other workplace settings and are just as affected when a business shuts down.

CWA is looking forward to working with the Labor Committee to help enact the bill and with the Department of Labor in its implementation.

Last week, I spoke to your colleagues in the House about H.R. 3, the comprehensive trade policy legislation. The message I brought to them is similar to the one that I bring before these panels.

Too many people, including lawmakers, think of the trade issue and other associated problems such as mass layoffs as problems affecting our basic industries in America's so-called "Rustbelt." Yet, in a recent year, the sunbelt "high tech" state of California lost the most jobs due to company shutdowns. Similarly, the sunbelt state of North Carolina suffered the most plant closings.

President Reagan reinforced another false myth recently when he introduced his competitiveness initiatives. He specifically singled-out communications technology as one area where "we are still a leader in innovation," an area he described where "Americans are light years ahead of everyone."

I'm an individual who is involved in the telecommunications industry on a daily basis, and I want to warn you that our domestic telecommunications industry is being eroded to near crisis levels. Indeed, the same economic, trade and tax policies which have undermined our basic industries are poised like a dagger at the jobs and stability of America's so-called "industries of the future."

Most tragic, in the case of workers in the telecommunications industry, the skilled craftspersons who have permanently lost their jobs are the cream of the American workforce. Yet even these wage earners, without the protection of a strong union contract, can be suddenly transformed into vagabonds who drift into the backwaters of American society due to the economic upheaval caused by the loss of a job.

The reason that many employees whom we represent have experienced layoffs is that our telecommunications and other "hi-tech" industries are now dominated by multinational corporations which conduct business from around the world as easily as you conduct business from your offices around the corner. The ability with which they move capital and technology on the international scene, close plants here and reopen overseas would shock you.

AT&T, our largest unionized employer, no longer stands for "American" Telephone and Telegraph. In 1985, AT&T closed it's Shreveport, La., plant at the cost of 4,000 jobs and re-opened in Singapore, it's first foreign manufacturing plant. And, today, not a single residential telephone is "Made In America."

I know this was a difficult decision for AT&T managers. But our tax laws, cheaper wages paid overseas and the newly deregulated telecommunications environment offered them little choice if they were going to be competitive.

Most recently, a similar tragedy struck the little Houston, Texas suburb of Katy. Katy has a population of about 3,200. Like many communities whose economy is based on oil, Katy is going through some rough times. In fact, you could call it a depression, just as serious as the Great Depression of the 1930s. AT&T has a sales and distribution plant in Katy that employs about 500 people, all represented by CWA.

This facility is very important to our members who work there, as well as to the workers who provide services, public workers whose jobs are affected by the tax base, businesses and so on. Obviously, the loss of any job in Katy, regardless of the number, has a serious impact on the total community.

In September, the company announced that the entire operation was being closed and that all 500 workers would be laid off. In addition to other factors there, the repair business is dropping. The Katy work is being transferred to Atlanta, Chicago, Cleveland and Denver. Other layoffs are projected in similar plants in Seattle and Minneapolis.

Texas, and Katy in particular, will be hardest hit. Yes, these members do have contract protections and the union is aggressively asserting their contract rights. We also are pursuing other avenues such as government job displacement assistance. But the ripple effects of this plant shut-down will be felt at every level of the economy in Katy, and by every worker and business, private and public sector, in the community.

There is a second chapter to this story, one which provides a clear signal of the current philosophy of American business and its implications for American workers, including all CWA members. AT&T is moving in the direction of what Business Week Magazine calls "The Hollow Corporation," companies which import foreign products for sales here, or which merely assemble components made overseas.

At the same time AT&T announced the Katy layoffs, the company also announced construction of a new manufacturing facility in Matamoros, Mexico. Again, according to corporate managers, a few supervisors will have an administrative office in Brownsville, Texas. The Matamoros plant will manufacture component parts which the company claims it does not now make and must buy on the open market.

These component parts will then be shipped to one of our manufacturing plants in Mesquite, Texas, for final assembly. But here's the hooker: On Friday, September 19, the company laid off 113 workers at the Mesquite plant.

Obviously, you and I are asking the same question. Why couldn't AT&T build their components plants in the USA where American workers could make products for American equipment? Then Governor of Texas Mark White, our CWA representatives and local government officials made the same pleas, but their requests fell on deaf ears.

In fact, AT&T Chairman James Olsen said in a recent Wall Street Journal article that one area of future business expansion is in foreign sales. He was quite blunt in stating that if AT&T were to crack a large overseas market, such as Japan, the company would probably build manufacturing plants there to provide the equipment. The results would be no American jobs and few benefits to American consumers.

Keep in mind that before 1984, telecommunications was a uniquely American industry. In 1982, for example, our nation enjoyed a $200 million surplus in our balance of trade in telephone and telegraph equipment sales and our telecommunications industries held the promise as the "future of American competitiveness."

The quality of our products, innovative research and worker productivity led the world. America's mostly unionized telecommunications workers enjoyed a solid middle-class standard of living and excellent job security. Younger Americans newly entering the job market could look forward to unlimited opportunities in telecommunications and high-technology industries.

But the breakup of the Bell System in 1984 and deregulation of our telecommunications industry was undertaken without a single thought to America's trade position in the telecommunications or high-technology world marketplace. Not a single bilateral or reciprocity trade agreement was negotiated with our trading partners while, virtually overnight, our markets were thrown open to foreign competition.

Today, not a single residential telephone is "Made in America." In 1986, we estimate our trade deficit in telephone and telegraph equipment will be 1.3 billion dollars. Our exports have remained virtually stagnant while imports soared from 600 million dollars to 1.2 billion.

America will, in 1986, record our first trade deficit in high technology products. We will post a $4 billion deficit compared to a trade surplus of 27 billion dollars in 1980. Imports of high technology manufactured goods have increased by nearly three-fold, from 28 billion dollars worth in 1980 to 76 billion in 1986.

Computer makers serving the military are now more dependent on semiconductors made abroad than ever before. Fujitsu's merger with Fairchild is sending shockwaves throughout the U.S. chip industry which the Joint Chiefs of Staff said recently could adversely affect national security.

The Wall Street Journal reports that Cray Research Corporation, which makes powerful computers for the military, now is having difficulty getting semi-conductor parts from one of its key suppliers: Hitachi. Hitachi, of course, also competes with Cray in the supercomputer market.

E. Patrick McGuire of New York's Conference Board warns, "Many U.S. military suppliers simply cannot cut it anymore without a lot of help." In addition to semiconductors, he also cites optical products.

Hundreds of thousands of jobs have disappeared in the telecommunications industry since the breakup of the Bell System in 1984. And current trends suggest a continuing downsizing in the future. These are jobs in skilled, professional and managerial positions for which high school and college graduates this year will not even have the opportunity to submit employment applications.

Although most of the 700,000 workers represented by the Communications Workers of America are employed in the telecommunications industry, we also represent more than 100,000 government, health care and other service industry workers. They have discovered that America's trade problems affect them just as deeply as any manufacturing worker.

When good-paying jobs are lost and unemployment remains at consistently high levels, a ripple effect is felt throughout our economy that erodes tax bases and effects all businesses, large and small. Today, America's massive trade deficit is setting off a tidal wave that is also swamping many of our non-telecommunications workers.

The situation for non-union workers, who do not have any contract protections, is even worse. The most heart-rending and tragic incident in the telecommunications industry involving mass layoffs occurred in December at the MCI Corporation.

Three weeks before Christmas, MCI dismissed 2,600 workers nationwide, about 15 percent of its workforce, in a mass layoff that has since become known as the "MCI Christmas Massacre." I want to give you one example of how this layoff was conducted. This story is about 200 MCI sales representatives in Southfield, Michigan, a suburb of Detroit.

On Tuesday, December 2, workers were given individual notices not to come to the office for work the next day. Instead, they were told to report to another location. This was before the layoffs were announced and no explanations were given for this deviation from normal procedures. But the workers didn't think very much about these instructions. They thought they might be going to a seminar or some other business function.

What they didn't know, until they showed up at the address they were given, was they were being sent to a motel room. In fact, the workers were scattered and sent to six different motels. MCI managers were waiting in the rooms for them to inform them that they no longer had jobs. Each worker was instantly terminated and paid on the spot. In addition, armed security guards were posted at the company's property at the facility to prevent any worker from entering the building after he or she was fired.

Of special note these MCI workers had developed close ties with our union. A majority of MCI sales representatives had signed union authorization cards requesting a representation election. CWA had filed a request with the NLRB for an election 10 days before the workers' jolting dismissal. This election would have been the first union representation vote ever conducted involving MCI workers.

We are trying to help them as best we can. But without any union contract protection, we are limited in our response.

Enactment of this legislation would support our collective bargaining efforts with our union employers while sending a message to companies like MCI that the American people expect American corporations to act with responsible behavior. Billion-dollar businesses like MCI should not treat their workers like Dixie cups. Beyond rescuing workers and their communities from the economic consequences of business closings and permanent layoffs, S.538 could enhance our competitiveness. The bill recognizes that our nation's ability to compete in the international marketplace starts with the skill and commitment of experienced workers.

CWA also believes that the key to American competitiveness rests on continuing job training and adult education. Along those lines, we negotiated several pioneering job training programs in our collective bargaining agreements last year.

In AT&T, for example, we negotiated the creation of a $21 million non-profit organization called "The Alliance for Employee Growth and Development." Under this program, our members will be eligible to receive free training for higher paying or different job skills within the company. They can also receive free education for any occupation they may want to pursue outside the company. If they want to be a doctor, or a lawyer or bricklayer, they can take advantage of the Alliance programs.

Similar training programs have been negotiated with Pacific Telesis, BellSouth and NYNEX. We are proud of these training programs as union-inspired, union-demanded and union-won at the collective bargaining table. These programs will become important demands in future collective bargaining on behalf of all our members.

We would like to consult with you on our experiences in these programs and be involved in the development of the Displaced Workers Unit, particularly the ways in which it will impact on the telecommunications industry.

The time has long since passed for our government to take steps to relieve the tragic impact of business closings and mass layoff of workers on local economies. For more than ten years, Congress has debated this issue. America's unions have tried to address this problem in our collective bargaining agreements, but it is a problem that can only be resolved through the requirements of law and resources of our national government.

With regard to the legislation, CWA also wants to make clear an important fact. The bill does not give workers and their unions any veto power forbidding a business from closing. The legislation would only require an employer to meet and consult with worker representatives. There is no obligation for an employer to keep an ailing facility open. In essence, the legislation is an extension of the duty to bargain in good faith.

Morale of American workers is at an all-time low. No industry or job is safe from layoff. The basic loss of job security for the majority of American workers, both union and nonunion, undermines productivity and the faith of workers in our economic system. S.538 presents a humane and reasonable approach that also makes good business sense. The bill provides practices, procedures and programs to let workers know that their jobs are in danger and to take steps to put them back to work as productive citizens as swiftly as possible.

We wish you success in your deliberations and urge quick passage of this legislation.

Question to Morton Bahr from Senator Paul Simon

Q. Could you please address the problems of dislocated women in your organization.

A. CWA surveyed its dislocated workers in April, 1986. In response to that survey, we were able to identify some of the unique problems of dislocation felt by women. We found that women were 30% more likely to remain unemployed longer than men. More women than men also indicated that they were working on a temporary or part-time basis and earning less than they had previously. Among all dislocated workers, we found that 78% earned less at their current jobs then they earned with AT&T.

Our dislocated union members are not an exception to the demographics of the 1980s. In many cases, the family unit depends on two income earners and yet is tied to a specific region. The lost income due to dislocation of the women wage-earner cannot be replaced and in some instances hers was the higher paid of the two jobs needed to sustain a middle-class standard of living. Of course, when a female heads a household or is the sole wage-earner, the loss of her job is devastating. The loss of her job, and its replacement by a lower paid job, can result in a substantial decline in the standard of living of her family even if it is a two wage-earner family.

Dislocation among women workers in rural communities leads to particularly distressful situations as replacement employment opportunities are even rarer than in urban centers. Further, replacement employment at equal levels of pay rarely occurs.

Questions to Morton Bahr from Senator Howard M. Metzenbaum

Q. In your testimony, you discussed specific instances of dislocation in telecommunications. Do you have any data on the impact of plant closings on the communications industry in general and on other high-tech industries? What geographic regions are most hard-hit by the loss of these high-tech jobs?

A. CWA has experienced substantial dislocation throughout the country. As a national union bargaining with national employers dislocation from closings in our industry have been nationwide. The latest round of cutbacks at AT&T focused in six cities -- Los Angeles, New York, Miami, Detroit, New Orleans, and Baton Rouge. Substantial cuts took place in a second tier of 20 major metropolitan areas.

My sense of those geographic regions hit hardest by the cutback in high-tech, in general, is that the high-tech centers, Silicon Valley, Route 128 surrounding Boston and the Research Triangle in North Carolina all suffered many plant closings. Other regions aspiring to mirror the economic success of Silicon Valley, suffered proportionately. It is difficult to track plant closings in part because the Reaganized Labor Department simply lacks the budget.

We are especially pleased that your legislation is applicable to office closings, as well as "plant" closings. In the service sector, employees have suffered from sudden office closings and consolidations.

Q. What is the level of labor-management cooperation in the industries served by your union with regard to worker adjustment assistance? How would the displaced worker unit fit into the current structure?

A. The level of labor-management cooperation varies tremendously. On one hand we are able to negotiate virtual lifetime employment security for employees at Pacific Bell, while on the other MCI can close a major office in Southfield, Michigan (near Detroit) with virtually no notice to its employees. The Southfield story bears telling.

MCI's behavior toward its employees at Southfield was despicable. At quitting time on a Tuesday, MCI told its employees to report the next day to one of six motels around the city. There, in small groups they were informed that they were terminated. Those that wanted to return to work and clean out their desks were required to make appointments in fifteen minute intervals. Those that didn't need to return to work picked up their last check. Those that did return to work were escorted by two security guards to their desks and then escorted back out of the building. Contrast that behavior with recent one year notice that AT&T gave when it closed an operation in the Northeast. With sufficient advance notice we have been able to reduce the major layoff significantly and still haven't reached the termination date. In this instance, workers have been retrained or cross trained for new positions and others have found new jobs. As AFL-CIO Secretary-Treasurer Tom Donahue said, "labor is willing to cooperate...all we need is a management partner."

Q. Please submit demographic data on your union's membership to the Committee.

A. Our membership's demographics roughly reflect that of the nation. Particularly since the 1974 EEOC consent decree, employment at our largest employers reflects national norms. Our membership is approximately 55% female and we are one of the largest unions in the South.

Senator **Metzenbaum**. Thank you very much, Mr. Bahr, and your full statement will be included in the record.

Unless my colleagues find some objection, I am going to suggest that we submit such questions as we have in writing, unless somebody feels that that would be unfair.

Senator Harkin.

Senator **Harkin**. Mr. Chairman, I just want to thank both Mr. Bieber and Mr. Bahr, especially for the examples you point out of what you can actually do when these plants threaten to close, and that you can actually save them by doing things, and the fact that the workers have a role to play, a very legitimate and good role to play, in perhaps giving business some ideas on how they might make their plants profitable again.

Mr. **Bieber**. Right. In my full text, I outline two specific examples there that I would urge you to look at.

Senator **Harkin**. Good.

Mr. **Bieber**. I have also witnessed situations where people who are working in a plant are tapped on the shoulder and asked to move aside while people come in and move the presses out, and when they asked where the press was going, they said, "Never mind, it is going out the door." I had this happen in Saginaw, Michigan.

I had another experience in Mount Clemens, Michigan, where people went on vacation, and they were told the plant was shutting down for two weeks. One of the maintenance people at night saw what he thought might be a fire in the plant. As he got closer, he noted that they had put tarpaulins over the windows. So he went up to the plant to peak in, and he discovered that the management had hired outside movers to come in and dismantle all the machinery, and move it out of the plant.

I might also say, Senator, in that case in Alabama with General Motors, that I mentioned in my written statement, it is interesting to note that the University of Alabama discovered that someone in management simply forgot to shut off the air conditioning equipment and the lights at the end of the eight-hour shift, and it was costing the company something like $1,400 a week. In a very short period of time we rolled up a savings of $14 million. The net result was that General Motors reinvested additional money in that plant. I visited that plant about six months ago, and it is doing very well.

This is one of the examples of why you need advance notice and consultation because, I must tell you, many times, the people who sit in the board room—and I think you will recognize I do wear a second hat; I do sit on the Chrysler Board of Directors, so I get a little bit of exposure to that side—make decisions based upon incomplete or misleading information.

Mr. **Bahr**. If I may make one comment, Senator, very shortly, the National Academy of Sciences will release a commission report, on which Doug Fraser and I are the two labor members, that will clearly respond to the point Senator Quayle was trying to make, and that is the question of productivity when advance notice is given.

The record is clear—productivity not only is not diminished, but the morale goes up and productivity increases right up until that facility closes.

Senator **Harkin**. Thank you, Mr. Chairman.

Senator **Metzenbaum**. Thank you very much, Mr. Bahr and Mr. Bieber. And I do not want our failure to question you orally to indicate a lack of interest. We are very grateful to you for being with us.

Mr. **Bahr**. Thank you.

Mr. **Bieber**. We understand that, and we thank you.

Senator **Simon**. While they are leaving and the other witnesses come up, let me thank Mr. Bahr and Lou Gerber for their help on a bill where we are trying to get telephone service to 7 million American homes that do not have it.

Mr. **Bahr**. Thank you, Senator. Let us not give up.

Senator **Metzenbaum**. Next we have Mr. Doyle, Mr. Thieme and Mr. Irving. Now, I know Mr. Irving is a Washingtonian, so I am going to ask him if he would be good enough to come back on the 26th, when this hearing will continue on under the Chairmanship of Senator Simon.

Mr. Thieme and Mr. Doyle, I do not know whether that is inconvenient for you. I gather the 26th does not accommodate to your own situation, so I guess we will hear from you.

But I want to say that I am much-disturbed that we are hearing from you under the pressures of time, and I have to say to my colleague who is not with us, Senator Quayle, who is the strongest advocate of some of the positions that you are about to state, that I feel bad that his rather extensive questioning of Governor Celeste really did impact upon our ability to hear you fully.

But Mr. Doyle and Mr. Thieme, I will be very happy to hear from you—but you should understand that there is both a Republican and a Democratic Caucus at this time, and all of us are anxious to be there—we should be there—please be good enough to make your remarks as briefly as possible, but we are grateful to you for being with us.

STATEMENTS OF FRANK P. DOYLE, SENIOR VICE PRESIDENT, GENERAL ELECTRIC COMPANY, FAIRFIELD, CT, MEMBER OF LOVELL TASK FORCE, ON BEHALF OF COMMITTEE FOR ECONOMIC DEVELOPMENT; AND ALLAN R. THIEME, CHAIRMAN AND FOUNDER, AMIGO SALES, INC., BRIDGEPORT, MI, ON BEHALF OF U.S. CHAMBER OF COMMERCE, ACCOMPANIED BY MARK DE BERNARDO, MANAGER OF LABOR LAW AND SPECIAL COUNSEL FOR DOMESTIC POLICY, AND ROBERT MARTIN, MANAGER OF HUMAN RESOURCES DEVELOPMENT

Mr. **Doyle**. Thank you, Senator, and if there is any other way we can participate, we will be glad to do so.

Senator **Metzenbaum**. Thank you.

Mr. **Doyle**. Thank you for the chance to speak today. I ask that the full statement be included in the record.

Senator **Metzenbaum**. Without objection, it will be.

Mr. **Doyle**. Having been on both the CED and the Labor Department task forces on worker adjustment issues, my conclusion is that the flexibility of our work force is one of the nation's greatest competitive assets, and also the key to our successful adjustment to the wrenching changes in the global economy.

I believe that too much of the current debate focuses on the fear of change and not enough on the new employment opportunities being created and the new skills being demanded. Innovative programs are needed, and fresh ideas of public/private sector cooperation opened up to facilitate the adjustment process for displaced workers toward new, productive work in our economy.

The danger, in my view, is that we may be tempted to slow the process of change in the mistaken belief that such actions will mitigate the effects on people. Legislation that would impede rather than speed the adjustment process may in fact cause serious harm to employees and companies.

I want to whole-heartedly support a bill that will at once help people affected by change and move forward the process of change.

I enthusiastically support Title I of this bill. It is far-seeing in its premises, and I believe it will make a major, constructive contribution to worker adjustment. The provisions proposed under this Title embody the consensus recommendations of the Brock Task Force, based on our central conclusion that it is in the national interest to foster, through public and private means, reemployment of the defined population of worker permanently displaced by economic change.

The establishment of dislocated worker units in the Department of Labor and at the State level, and the creation of rapid-response teams in each State are major advances in providing quality services to workers affected by plant closings and large layoffs.

Other constructive incentives to readjustment are the provisions for ensuring continued eligibility for unemployment compensation benefits for individuals attending education and training programs under the Title.

I also find that the demonstration programs in Title III are innovative and worth trying. We may find some important success models in these programs, and I applaud their inclusion in this bill.

Taken together, I believe that Titles I and III represent exactly the kind of bold, imaginative steps we can and must take as a nation right now—steps for which there is an urgent new consensus.

That, however, is not the case when it comes to Title II in the version of this bill. I believe that the mandatory advance notice and consultation provisions put forward here will split and undermine the hard-won Brock Task Force consensus on worker training and adjustment. That consensus not only provides the underlying strength necessary to get Titles I and III of this bill passed, but it is the foundation for building the effective tripartite relationships that will make this legislation work if it becomes law.

Let me explain my views as to why I do not think Title II will work.

First, the issue of mandatory notice. The bill as currently written seeks to impose a single, monolithic answer on a highly complex and highly differentiated set of problems. The bill lumps together plant closings and so-called mass layoffs, when in fact there are practical and substantive differences between closings and layoffs.

The finality of a closing and accompanying permanent loss of jobs is clearly different from a layoff resulting from cyclical shifts in the economy or changes in specific markets.

Let me be absolutely clear. A company that does have control over its business circumstances should give notice on plant closings, and the practice is spreading. But it is best given on a negotiated or voluntary basis where varied business conditions can be taken into account, and the focus is kept on easing the transition of workers to new jobs.

The problem of notice arises for those firms that are either unprofitable or operate in high-risk business environments. No amount of mandatory notice requirements can change the reality of business failure. What it can do is decrease the flexibility and competitiveness of U.S. companies, especially the smaller firms that are our major generators of new jobs.

As for the consultation provisions of Title II, consultation has a precise, collective bargaining meaning, designed for situations quite different from those addressed here. A proposed requirement that employers consult for the purpose of agreeing to alternatives is a basic departure in the structure of U.S. labor law. Let us debate consultation separately, not tack it onto a bill addressing different issues—a bill that can work without it.

The significant strides made in Titles I and III should not founder on the divisive and diversionary issues of mandatory notice and consultation.

I would sincerely hope that in areas where we do have consensus, we can move forward together and move forward quickly. Let us pass a bill that holds a strong, forceful consensus of the magnitude I am convinced does exist today, on the need to cushion, adapt and speed the process of adjustment.

I am confident that American business can support a version of this bill built around Titles I and III, which together constitute a major, even landmark, attempt to address the effects of economic change on American workers and communities.

Let me conclude by suggesting that it is a broad consensus bill that will work in the workplace, and in the end help the very people who bring us together today.

Thank you very much, Senator.

Senator METZENBAUM. Thank you very much, Mr. Doyle, for your constructive testimony and for the work that you did on the Lovell Task Force. I am hopeful that you will be willing to reason with us, engage in a dialogue, and see if there is some middle ground to make it possible for Title II to be included—and I am not asking you to commit yourself, except to commit yourself to be willing to reason with us.

Mr. Doyle. I am always willing to reason with you, Senator.

Senator METZENBAUM. Thank you very much.

[The prepared statement of Mr. Doyle follows:]

TESTIMONY OF
MR. FRANK P. DOYLE
Senior Vice President
General Electric Company

BEFORE THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE
Tuesday, March 10, 1987

MR. CHAIRMAN:

It is a pleasure to have this opportunity to meet with you to discuss the proposed "Economic Dislocation and Worker Adjustment Assistance Act." I am approaching this issue today in two separate yet related capacities:

- First, as Chairman of the Committee for Economic Development's (CED) Ad Hoc Task Force on Labor Market Adjustment, which has developed the report entitled Work and Change: Labor Market Policies in a Competitive World; and

- Second, as a member of Labor Secretary Bill Brock's Task Force on Economic Adjustment and Worker Dislocation, which recently completed its final report.

I am here today to lend my enthusiastic support to Titles I and III of the Senate bill which are aimed at speeding the adjustment of workers from old to new work. I also want to take this opportunity to explain why adding mandated advance notice and consultation introduces politically divisive and economically damaging issues to a bill that otherwise expresses the consensus achieved by the Brock Task Force.

Mr. Chairman, the reality of intense international competition has shaken the American people's confidence in the capability of the U.S. economy to generate new opportunity. An increasing number of public- and private-sector leaders are in one way or another talking of steps to try to protect American jobs and maintain our standard of living through restrictive measures which would slow the process of change in our economy.

It is our view, however, that such steps are likely to impede the nation's ability to reposition its industries and workforce to compete successfully in increasingly internationalized markets. If that were to happen, an even greater number of jobs would be lost, and the nation's ability to deal with the social costs of change would be diminished.

It is clear that the old security of a slower changing world, workplace, and employment relationship is no longer available and cannot be artificially sustained. The answer I believe is to create a new security, based on equipping companies and workers alike to deal with, even gain from, fast-moving and unavoidable change.

Today's discussion goes to the heart of the debate over economic change, and that is the ability of people to benefit from change. I would argue that the more severe effects on people and communities come not from change that moves too fast, but from change that is made to move too slowly. The issues of competitiveness and employment security are therefore inextricably linked -- the key to both is the ability to adapt in order to take advantage of new opportunity.

The issue of worker displacement is best understood in the context of adjustment -- of helping people move from old work that is being eliminated to new work that is being created. To be successful, a labor market adjustment effort must address the hardships caused by change while recognizing the seeds of new opportunity created by economic restructuring.

The most important test of any labor adjustment policy, then, should be whether it eases or impedes the transition to new opportunity -- whether it establishes or denies supportive mechanisms for workers undergoing an often painful and costly move to a new job.

The Brock Task Force worked for a year to develop a consensus among representatives from labor, business, academia, and the government, on the issues we are addressing today. The

Task Force agreed that job loss was an inevitable and concomitant part of achieving and maintaining a competitive, healthy economy. The consensus was based on the group's conclusion that displaced workers -- by virtue of their long attachment to their former jobs and their experience in the workforce -- form a population that is (a) deserving of special attention, and (b) for whom targeted retraining and assistance efforts could be unusually effective.

Title I

Title I of this bill embodies this consensus. The establishment of Dislocated Worker Units in the Department of Labor and at the state level -- and the creation of rapid response teams in each state -- are major advances in providing quality services to workers affected by plant closings and large layoffs. On-site availability of programs, versatility in applying state and local funds where they are most needed, and flexibility in coordinating public- and private sector efforts all pass the tests of easing adjustment and providing supportive mechanisms for displaced workers.

Furthermore, the establishment of incentives to reemployment can ensure that federal programs move beyond the immediate income-support needs of displaced workers and speed their reentry to the workforce. One such incentive included in the bill ensures the continued eligibility for unemployment compensation benefits of individuals attending education and training programs under the Title. The CED also has proposed that displaced workers be allowed to continue to collect income-support benefits if they suffer earnings losses upon reemployment. Such an option would be particularly appropriate for displaced workers who are starting over in new industries or occupations, and as the Bureau of Labor Statistics has shown, fully 50% of displaced workers who become reemployed in full-time jobs make such a major job change.

Other valuable labor market services provided by the bill include better access to labor market information; job search assistance, including job clubs; provisions which permit the use of funds for supportive services such as child care, commuting assistance, financial and personal counseling; and relocation assistance. Programs providing basic education and literacy are also helpful. All the evidence regarding the quality of adjustment and the changing structure of occupations highlights the importance of education. The prospects for shorter periods of joblessness and greater earnings recovery upon reemployment improve for all groups of displaced workers the higher their levels of educational attainment.

I enthusiastically support Title I of this bill. It is far-reaching, and will make a major and constructive contribution to worker adjustment.

Title III

The demonstration programs described in Title III are innovative and worth trying. In particular, I support the use of funds for training loans and to encourage self employment. Such experiments will add to the array of transition options available to displaced workers. We may find some important success models in these programs, and I applaud their inclusion in the bill.

Title II

That brings me to Title II, the most controversial and flawed part of the bill. The CED, the Business Roundtable, and many other private business groups have encouraged companies to provide as much notice as possible of necessary business decisions affecting jobs, particularly in cases of plant closings, work transfers, and new technology. Most people who have studied this issue agree that advance notice allows employees time to adjust and gives management the time to implement business moves in a way that minimizes hardship. Advance notice is most effective when combined with other support programs, provided that the advance notice period is used to help prepare people for the transition to new opportunity.

However, the advance notice and consultation provisions of this bill, as written, do not focus on the adjustment of workers, but rather on slowing the process of change and preventing necessary business moves. The provisions shatter the hard-won consensus of the Task Force that assistance should focus on adjustment and on enabling people, through training and support programs, to qualify for new opportunity. That consensus, I believe, is needed not only to help get this bill passed, but also to serve as the foundation for building effective tripartite relationships that will make this legislation work if it becomes law.

Let me explain very specifically the reasons why consensus on mandatory notice was not reached and why I think Title II is unworkable.

First ... the bill lumps together plant closings and so-called mass layoffs. Yet there are practical and substantive differences between closings and layoffs.

particularly with regard to the impact on jobs. Most companies are not precipitous or careless in making a decision to close a plant. These decisions are made only after consideration of all alternatives and factors involved. In the end, plants are closed for one reason: the company is not able to sell its products competitively in the marketplace. The finality of a closing involves the greatest negative impact on employees, leaving no doubt at all that the accompanying loss of jobs is permanent.

In contrast, most layoffs do not involve permanent employment loss. For example, businesses with short order cycles incur layoffs that are usually temporary and are an understood and expected part of the way the business operates in direct response to changes in its markets. By not distinguishing between the variety of business situations, the bill, as currently written, disregards important differences in employment outcomes and adjustment experiences. Workers who will be returning to the same employer do not have to deal with the type of radical adjustment faced by workers whose jobs have been permanently eliminated and who must now seek employment in different industries or occupations.

Second ... the mandated advance notice and consultation provisions in Title II of this bill will restrict the flexibility of U.S. companies at the very time this unique American strength is becoming increasingly recognized as critical to competitive success. The ability to retrain and redeploy workers in response to changing markets is a definite advantage in competitive battles where technology and equipment are essentially equal and financing and labor costs often favor the opposition. It's our leg up ... and an advantage the U.S. should retain. It would be ironic if we were to introduce rigidities into our system at the very time other countries are seeking to emulate the flexibility of our labor markets.

Flexibility is especially critical to the small and medium sized companies that are the major job generators of our economy. These companies tend to operate in high risk business environments. Flexibility is essential to their success; the costs of failure have to be kept low or the incentives to start up will be lost and the new jobs forfeited.

Third ... the consultation portion of this bill is fraught with problems. The notion of consultation in the form proposed by Title II is a fundamental alteration in the structure of U.S. labor law and labor relations. Presently, there are no legislated provisions of any kind that require an employer to "consult" with employee representatives or some outside governmental authority "for the purpose of agreeing to a mutually satisfactory alternative" to basic entrepreneurial decisions. Such a basic departure in laws governing employer-employee relationships should be addressed separately and directly through a full debate on the merits of consultation. The adjustment objectives of this bill can be achieved without this kind of fundamental alteration of U.S. labor relations.

Even more troublesome is the prospect that the consultation provisions will raise false hope and dangerously delay the adjustment process. As I already indicated, companies don't treat lightly the decision to close a plant. When they do make the decision it is generally after other realistic alternatives have been explored. A consultation-type process would focus workers and communities on the unlikely chance of finding a mutually satisfactory alternative, and thus divert attention and resources from the urgent need to get the adjustment process underway. I therefore believe that such mandatory consultations would undermine the effectiveness of the adjustment which Titles I and III of this bill seek to facilitate.

Fourth and finally ... let me point out that the notice provisions are simply not practical. Every business is different and must be recognized as such. Small businesses, for example, face problems that vary substantially from those of large employers. In addition, some firms might lose customers or access to credit during a notice period, forcing an even earlier than planned shutdown.

Employers cannot always predict the timing and circumstances under which they may be forced to cease or reduce production. There are many economic circumstances beyond the control of the business, such as sudden or unexpected cancellation of major contracts, interruptions in material flow, and technology developments. Businesses with very short order cycles would find it economically impractical, even impossible, to give extended notice of layoffs. Although long-cycle businesses may be able to provide such notice, the application of a universal standard to all businesses makes little sense. These differences in business conditions are best addressed in the context of collective bargaining agreements and in personnel and benefits policies tailored to specific market and labor force needs.

Based on my experience, I believe that the impact of such arbitrary notice provisions could be disastrous at a time when many U.S. industries are fighting for their lives. I also believe the enactment of these notice provisions could have the unintended effect of creating job loss. Large employers, for example, may well choose the alternative of reducing their workforce to a stable core and using subcontractors and temporary employees to meet fluctuating market needs. The notice provisions in the bill will also discourage new business startups. Indeed, the effects are likely to be felt most by small and medium-sized companies which are the major generators of new jobs in our economy and whose viability is linked to the health of large companies.

If such unintended results were to happen, we would have lost an important means of combatting foreign competition. For in addition to creating jobs, small businesses invent new products, revive old manufacturing techniques, and help the economy move into new kinds of work. They also pick up resources abandoned by large firms and put them to productive use.

Summary

Worker adjustment is a critical issue and demands a solution embodying the broadest possible consensus. Only in this way can legislation be passed and, more importantly, its effectiveness as law be assured. I am concerned that the advance notification and consultation provisions will shatter the hard-won consensus achieved by the Brock Task Force unless the adjustment and notification issues are considered separately.

Let me be absolutely clear: advance notice is good employer practice and should be given whenever possible. It is best given on a voluntary or negotiated basis, where the varied business conditions can be taken into account and the focus is kept on easing the transition of workers to new jobs. The problem of notice arises in those circumstances over which companies do not have control, as well as for firms that operate in either short cycle or high risk business environments, or firms that are simply unprofitable.. No amount of mandatory notice can change the reality of business failure. What it can do is decrease the flexibility that is vital to all companies.

The bill, as presently written, pulls in opposites directions. Titles I and III would establish much-needed mechanisms to accelerate the adjustment of displaced workers.

Title II, on the other hand, would diminish the effectiveness of this effort by attempting to postpone, or even deny, competitive realities.

There is now a broad and meaningful consensus on the helping displaced workers. That consensus should go forward: it will speed the adjustment of workers; it will make the U.S. more competitive in world markets. It should not be allowed to founder on issues that by their very nature are politically divisive.

Thank you very much.

[Editor's Note: In the interest of economy, additional material submitted for the record by Mr. Doyle and published by the Committee for Economic Development entitled "Work and Change: Labor Market Adjustment Policies In A Competitive World," and the CED's Annual Report for 1985, were retained in the files of the Committee.]

Senator **Metzenbaum**. Mr. Thieme.

Mr. **Thieme**. Thank you, Mr. Chairman.

I am founder and Chairman of Amigo Sales, Inc., and a member of the U.S. Chamber of Commerce Council of Small Business.

Accompanying me today is Mark de Bernardo, Manager of Labor Law and Special Counsel for Domestic Policy for the Chamber; and Robert Martin, Manager of Human Resources Development for the Chamber.

I appreciate this opportunity to express the Chamber's views and opposition to S. 538.

We commend you for addressing the important issues of this bill. We share the Committee's interest in solving the problems of the long-term unemployed, and stand willing to assist you in developing a suitable worker adjustment program.

While such issues are of concern to all businesses, they are of particular concern to the small business community. More than 70,000 small businesses failed last year—a number that the Chamber believes will increase significantly if S. 538 is enacted, and a number that will skyrocket if the labor and employee benefits bills now under consideration by Congress are enacted.

I would like to share with you a personal experience in my business. In 1967, I designed and built a motorized, scooter-type wheelchair for my wife. In 1968, I built ten of them in my garage. By 1983, we had gross revenues of $12 million.

The growth and success of our company have not been uninterrupted. There have been major setbacks which necessarily have affected the employment levels of our company. Over the years, the number of jobs that we have been able to provide has fluctuated, sometimes dramatically.

Fortunately, we have the ability to respond quickly and to take decisive steps to turn around and revive what today remains a profitable and successful company.

Today we have 76 employees—a 10 percent increase over last year since we closed the New Mexico office. We consolidated both facilities at the home office in Michigan.

We closed down the New Mexico regional office out of necessity. It was not a decision we took lightly. And the layoff of workers, however necessary, was regrettable. However, we treated our employees fairly. We did not need a law to force us to do that. We did it because it is good business, and it is the right thing to do.

Small businesses do not need and do not want a law to tell them what they can and cannot do to save their livelihoods.

In New Mexico, we ultimately laid off over 50 employees. At first, our intention was only to cut back; to shut down the assembly operations and thereby lay off 15 to 17 employees. To these workers, we gave four months' notification of their layoffs. However, because competition increased, and a successful transition and marketing strategy had not yet been fully in place, the company's financial position worsened. I did not know and could not know what would happen in 90 days or 180 days, but I knew we had to cut back.

But we did not realize we would have to shut down completely. However, to remain solvent, remain profitable, and preserve the company and its remaining jobs, we realized eventually that we had to close the New Mexico office. We therefore discontinued not only the assembly operation, but also the accounting and marketing operations as well.

Although more than 50 workers lost their jobs, they all received substantial notice before they were laid off—some, as much as four months. All stayed on at full pay and with full benefits.

I am proud to say our entire work force, with our company's assistance, successfully readjusted and found alternative employment. However, I am convinced if the requirements contained in S. 538 had been imposed on us, we would be out of business today.

I am concerned that the United States unfortunately is emulating Belgium, and that S. 538 is one more step, a major step, to becoming even more like Belgium, where there is a 20 percent unemployment rate.

Congress should not take away the freedom of the entrepreneur. It is the strength of our country. We should not destroy the incentive or impede the spirit of enterprise.

In conclusion, management's ability to make judgments on workplace closings and relocations without burdensome and unwarranted government interference is essential. Often, what is at stake is survival of the company. To handcuff employers would result in industrial immobility. The result would be lower productivity, imbalance in our collective bargaining system, and ultimately, loss of many jobs.

Senator METZENBAUM. Can you wind up, Mr. Thieme?

Mr. THIEME. The U.S. Chamber of Commerce respectfully urges Congress not to enact S. 538, and I personally would ask that you please listen to small business, the people that make the jobs in the United States.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Thieme and responses to questions submitted by Senator Metzenbaum follow:]

STATEMENT
on
PLANT CLOSINGS, LAYOFFS, AND WORKER DISLOCATIONS
and
THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT, S. 538
before the
SUBCOMMITTEE ON LABOR
and the
SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY
of the
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
for the
U.S. CHAMBER OF COMMERCE
by
Allan R. Thieme

March 10, 1987

I. STATEMENT OF INTEREST

I am Allan R. Thieme, chairman and founder of Amigo Sales Inc. in Bridgeport, Michigan. I am a member of the U.S. Chamber of Commerce Council of Small Business. In 1981, I was named the "National Small Business Person of the Year" by the U.S. Small Business Administration. Accompanying me today is Mark A. de Bernardo, Manager of Labor Law and Special Counsel for Domestic Policy for the Chamber, and Robert L. Martin, Manager of Human Resources Development for the Chamber.

I appreciate this opportunity to express the Chamber's views on the plant closing-worker adjustment assistance legislation and the Chamber's opposition to S. 538, The Economic Dislocation and Worker Adjustment Assistance Act.

We commend you for addressing the important issues of plant closings, layoffs, worker dislocations, and adjustment assistance. We share the Committee's interest in solving the problems of the long-term unemployed and stand willing to assist you in developing a suitable worker adjustment program.

The so-called "plant closing" proposals are a major concern to the business community because of the potential for extensive economic harm and employment disruption, as well as the fundamental questions they raise regarding the appropriate roles of government and labor in the basic decision making of employers concerning the economic well-being of their businesses. Likewise, the complex issues surrounding worker adjustment (i.e., retraining, remedial education, personal finances, and job counseling) are receiving increased interest from the business community.

While such issues are of concern to all businesses, they are of particular concern to the small business community. More than 70,000 small businesses failed last year, a number that the Chamber believes will increase significantly if S. 538 is enacted, and a number that will skyrocket if the labor and employee benefits bills now under consideration by Congress are enacted -- particularly proposals regarding the minimum wage, mandated health benefits, parental leave, and comparable worth. Proponents of these proposals have worthy goals which generally we share. Yet we also recognize, and urge you to recognize, the detrimental effect such proposals can have, both individually and collectively on ability to compete and to create new jobs. (In this regard, we commend Senator Quayle's efforts to look systematically at the overall impact of these types of propsals on unemployment, job creation, and payroll costs.)

II. THE CHAMBER'S POSITION

While the Chamber recognizes the problems plant closings and relocations can cause, the Chamber also recognizes the additional problems created by inappropriate legislative "solutions," such as S. 538.

The Chamber strongly encourages employers' voluntary efforts to provide meaningful and timely assistance to workers who lose their jobs as a result of layoffs or plant closings. These efforts, when possible, should include prenotification of affected employees of layoffs as soon as it is practical to facilitate placement, readjustment, retraining, and/or relocation efforts. Furthermore, the Chamber supports the readjustment programs and services available through the Job Training Partnership Act (JTPA) Title III program. Title III, which is administered through state job training coordinating councils, provides service to thousands of dislocated workers annually. The Chamber was one of the original supporters of the JTPA in 1982 and remains committed to the principles of public-private partnership embodied in this legislation.

The Chamber opposes any legislation that includes mandatory notice and consultation provisions. Therefore, the Chamber finds Title II of S. 538 particularly objectionable, for numerous reasons, including:

- o The possibility of injunctive relief and other means of lengthy delay to employer "proposals" to implement layoffs, delays which often may, in fact, jeopardize the financial solvency of the company and the preservation of jobs;
- o The unreasonable, highly subjective, and highly litigious standards of "good faith" for employers in consulting/negotiating;
- o The burdensome and overly extensive duties to disclose information;
- o The lengthy notification requirements and the infeasibility of the less-than-meaningful "escape clause" from these three-to-six month prenotification mandates;
- o The elevation of local governments to seemingly omnipotent and omnipresent status in negotiations and fundamental business decision-making;
- o The creation of de facto "union" representation for nonunion work forces, a cumbersome and ethereal concept without procedural and legal safeguards, without the right of employees to choose not to have "union" representation, but with major ramifications for union organizing; and

- The wholesale disruption and reversal of National Labor Relations Act (NLRA) and Supreme Court precedents, and the creation of a major imbalance in labor-management relations.

In short, many of this bill's requirements are restrictive, inflexible, expensive and counterproductive to the goals of preserving jobs and assuring profitability. The Chamber also has some objections to the Dislocated Workers' Adjustment Services (Title I) and Dislocated Workers' Demonstration Programs (Title III) provisions. We question the creation of a new federal program for workers dislocated by plant closings. We that believe the Congress should not legislate special-interest programs such as S. 538, and Trade Adjustment Assistance programs but begin to focus on developing a comprehensive program that meets the needs of dislocated workers, irrespective of the cause of their dislocation. In this regard, on February 11, 1987, the U.S. Chamber's Board of Directors endorsed, in concept, the Administration's Worker Readjustment program contained in the 1988 Department of Labor Budget request. Also, we believe that the direction outlined in the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation deserves serious consideration.

III. THE EXPERIENCE OF AMIGO SALES INC.

In 1967, I designed and assembled a motorized wheelchair to help my wife, Marie, after she was striken with multiple sclerosis. The first battery-powered, easy-to-maneuver, three-wheeled cart was assembled in my garage. In 1968, I built 10 more carts in my garage so that other disabled persons in our community could enhance their mobility and range of activities. In 1969, after 15 years in the plumbing business, I founded Amigo Sales Inc.

The Amigo, named by Marie, is a three-wheeled scooter, which is a more compact and maneuverable alternative for disabled persons than the conventional two-wheel wheelchair. It has a swivel chair to permit those who cannot walk to pull up to a table and work comfortably. Its narrow width

(18 inches) and compact turning radius (36 inches) allow users to go through doorways and around corners that conventional wheelchairs cannot negotiate. Its low center of gravity makes it hard to tip over.

Obviously, I am not the only person who believes that the Amigo is a tremendous aid to disabled persons. What started with one motorized device in my garage has grown to a company that has sold as many as 6,000 motorized devices in one year.

However, the growth and success of our company have not been uninterrupted. There have been major setbacks, which necessarily have affected the employment levels of our company. Over the years, the number of jobs that we have been able to provide has fluctuated, sometimes dramatically.

Fortunately, we have had the ability to respond quickly and to take decisive steps to turn around and revive what today remains a profitable and successful company.

Initially, our company nearly failed because the Amigo was such a new concept. Then, the Social Security Administration dealt a major blow by ruling that the Amigo was ineligible for Medicare or Medicaid reimbursement. Its ruling was reversed later after extensive efforts by Amigo owners. Later, a mistake in distribution strategy -- using medical and surgical supply stores instead of commissioned salespersons -- nearly shut us down. Finally a strong but unexpected competitive challenge arose: in its first 12 years, Amigo Company had only one direct competitor; in the last four years, 20 new competitors have come into the marketplace.

These setbacks have hurt, but each time our company has adjusted, taken the necessary steps, and survived. Today, we are once again growing. Amigo Company has 68 employees, a 10 percent increase over last year since we closed the Albuquerque, New Mexico office and consolidated at the home office in Bridgeport, Michigan.

We closed down the New Mexico regional office out of necessity. I wish that we could have avoided it. It was not a decision we took lightly, and the layoffs of workers, however necessary, were still regretable.

However, we treated our employees fairly. We did not need a law to force us to do that. We did it because it is good business and the right thing to do. Small businesses do not need and do not want a law to tell them what they can and cannot do to save their livelihoods.

In New Mexico, ultimately, we laid off 52 employees. At first, our intention was only to cut back -- to shut down the assembly operations and thereby lay off 15 to 17 employees. To these workers, we gave four months prenotification of their layoffs. However, because competition increased and a successful transition in marketing strategy was not yet fully in place, the company's financial position worsened. I did not know -- and could not know -- what would happen in 90 days, 120 days, or 180 days (the length of S. 538's graduated notice requirements) to the company to which I had devoted nearly half of my life and all of my resources. I knew we had to cut back, but we did not realize I had to shut down completely. However, to remain solvent, maintain profitability, and preserve the company and its remaining jobs, we realized eventually that we had to close the New Mexico office. We, therefore, discontinued not only the assembly operations but also the accounting and marketing operations as well.

Although 52 workers lost their jobs, they all received substantial notice before they were laid off -- some as much as four months. All stayed on at full pay and with full benefits until the final day of operations. We brought in a placement specialist to counsel employees on such things as resume preparation and interview techniques. We sent notices to six major companies in the area with which Amigo Company had worked and told them of the personnel we had who would be available. Five of the workers were relocated to the Michigan office.

I am proud to say that our entire work force -- with our company's assistance -- successfully readjusted and found alternative employment.

However, I am convinced that if the requirements contained in S. 538, had been imposed on us, we would be out of business today.

Our efforts to save Amigo Company and most of its jobs required flexibility, the ability to respond, and -- like the motorized devices that we manufacture -- the freedom to maneuver. We operate in a market and under financial conditions that change daily. There was a great deal of uncertainty about which and how many people we would have to lay off and whether Amigo Company would remain open in New Mexico or anywhere. Most of all, there was financial uncertainty.

At this time of financial crisis, we were constantly negotiating with the banks, trying to secure loans that would keep Amigo Company alive. Banks in both Michigan and New Mexico turned us down because we were in both Michigan and New Mexico. The banks would not work with me unless the company was consolidated in one location. The company's assets were the collateral to prospective loans, and the banks would not accept out-of-state assets as collateral. Outside influences beyond our control, and on short notice, compelled us to close one office out of financial necessity.

The lengthy and complex notice and consultation provisions of S. 538 -- particularly the consultation requirements that would have forced us to negotiate with the state of New Mexico and representatives chosen by the employees through state-administered procedures, to open our books and justify our actions, and to show that we had negotiated with government and labor representatives "for the purpose of agreeing" to alternatives or modifications with the sufficient "good faith" and intent to agree -- would have paralyzed our ability to revive Amigo Company. If we had been forced to keep all of our employees or delay the actions we took because we were subject to S. 538, today I would have no employees and there would be no Amigo Sales Inc.

I am proud that when the office closing was carried out, our workers were treated fairly and honestly. Their morale stayed high; our relationship remained good; and we worked together to face and beat our problems. It was done on a voluntary basis -- without government interference, without our employees telling me how to run Amigo Company, without unnecessary delay, litigation and red tape, but with successful worker readjustments. Such voluntary programs work. They should continue to work -- voluntarily.

There is another business experience that I have had that is extremely relevant. At one point, our company's sales in Europe were high. There was a good market for the product, and the dollar was relatively weak, which made the Amigo much more affordable and competitive. We opened a small sales office in Belgium. Sales were good and the time was right for growth -- but we did not expand. I refrained from further investment and expansion -- and from creating more jobs -- because of Belgium's restrictive labor and employment laws. In Belgium, you have to guarantee the salary of a laid-off employee for 18 months. We were afraid that because of the potential liabilities under Belgian labor law, we could not afford to risk expansion. It was too dangerous to be aggressive, to be entrepreneurial, to grow.

It was the right decision. The increased value of the dollar hurt Amigo's European sales. The restrictions and costs of Belgian labor law might have forced our company -- all of our company -- into bankruptcy.

I am concerned that the United States, unfortunately, is emulating Belgium in this regard. S. 538 is one more step -- a major step -- toward our becoming even more like Belgium. The unemployment rate there is nearly 20 percent. Those familiar with Belgian labor and employment law, as I am, should not be surprised. I ask you today -- why are we going down that same road?

I am afraid that S. 538 would serve as a further impediment to people like my and would dissuade would-be small business entrepreneurs from going into business or expanding their businesses.

Congress should not take away the freedom of entrepreneurship: it is the strength of our country. We should not destroy the incentive or impede the "spirit of enterprise" of Americans who want to work, to succeed and to create jobs. We should not confront small businesses with more restrictions but should free and encourage them with fewer restrictions. Most of all, we should not call a fundamental economic decision of an employer about the survival of his or her company a "proposal" and then delay, negotiate, counterpropose, and litigate that fundamental and necessary exercise of management prerogative.

Despite the worthy intentions of the sponsors of S. 538, it would be bad policy. In the interest of our economy, our freedom, and our spirit of enterprise; for the sake of small and large businesses and of employers and employees; and for the purpose of preserving and, ultimately, creating jobs, S. 538 should not be enacted.

IV. ADVERSE IMPACT ON COMPETITIVENESS

Undoubtedly, serious economic and social dislocations can occur when employers close plants or relocate operations from one facility to another. However, the imposition of legal constraints on employers to impede management's ability to close or relocate plants -- in the long run -- fails either to solve the problems of dislocated workers or to address the causes of plant closings. Moreover, it has substantial negative ramifications on the ability of American business to compete.

Plant closing legislation, such as S. 538, would be harmful to the economy in general and, ultimately, would not help even those workers and communities that it is intended to help. Because such bills significantly impede employers' ability to phase out antiquated products and production processes in favor of more competitive ones, the ultimate result is loss of competitiveness and, correspondingly, loss of jobs, to an employer -- either domestic or foreign -- who can phase in more competitive products and production processes.

These concerns are heightened by the current focus in Congress and across the country on competitiveness. This spring, as Congress shapes a package aimed at improving U.S. international competitiveness, it should bear in mind that the seemingly unrelated social welfare initiatives (e.g., this bill, parental leave, and mandated health care) now also under consideration on Capitol Hill could have a profound and contradictory impact on the ability of U.S. businesses to compete with overseas rivals.

The United Auto Workers (UAW) union recently has launched a major television advertising campaign to promote competitiveness. Its ads are well-produced and effective; their message compelling.

However, some of the UAW's actions contradict that message -- particularly, its active support of plant closing legislation, such as S. 538. How can you campaign for increased competitiveness for America's companies and simultaneously support S. 538 and other legislation that would handcuff employers with decidedly noncompetitive costs and restrictions?

Congress, in general, and the members of these Subcommittees, in particular, should consider carefully which legislative policies increase competitiveness and which undermine it.

The ability of employers to seek maximum efficiency and productivity is essential in order to compete successfully in world or domestic markets. To the extent that S. 538 prohibits or impedes management's ability to maximize efficiency -- through automation, streamlining of operations, layoffs, or relocation of operations to more efficient plants or to more productive markets -- this legislation handicaps American industry's efforts to counter the already strong challenge from abroad.

If enacted, S. 538 would decrease America's competitiveness.

V. OTHER POLICY ARGUMENTS

Beyond the detrimental effect that plant closing legislation, such as S. 538, would have on the competitiveness of American business, there are other substantial disadvantages to such legislation.

If enacted, S. 538:

(1) Would Ignore the Real Causes of Worker Dislocations -- One fundamental problem with S. 538 is that, to a large extent, it addresses the problem of worker dislocations from the wrong direction. S. 538 would neither create jobs nor make companies profitable. It addresses the results of plant closings, not the causes, and therefore is not a "solution" to the plant closing problem. A plant closing is only the final state in the economic cycle. A complete business cycle begins with the opening of a plant and includes its expansion, maturation, and contraction. With a view of the entire economic cycle of a business enterprise, the greatest concern should be about the generation of jobs, not attempts artifically to resuscitate jobs that already have been lost;

(2) Would Insert Government in the Wrong Role -- S. 536 would put local governments where governments should not be -- in the boardrooms of America, usurping management's prerogatives to make economic decisions regarding the well-being of their companies. Governments' involvement in these fundamental business decisions represents an increase in regulation for financially troubled employers at a time when more flexibility and less regulation are necessary;

(3) Would Reduce Efficiency -- Employers must be free to close inefficient plants or move operations from marginally efficient to more efficient, lower-cost facilities. S. 538, because it impedes such management actions, would force some companies to produce inefficiently, and such companies cannot exist long in a competitive market;

(4) Would Increase Costs to Consumers -- Forcing employers to keep inefficient plants open or preventing them from moving operations from marginally efficient to more efficient, lower-cost facilities would result in more expensive production, which, in turn, would result in increased costs for consumers;

(5) Would Ultimately Only Delay -- Not Prevent -- Loss of Jobs -- Ultimately jobs will be redistributed from lower-efficiency plants or areas to higher-efficiency plants or areas, with or without plant closing and relocation controls. Although some companies may be prevented from seeking maximum efficiency by such legislation, other companies will avail themselves of these advantages with new plants or expansion. Ultimately, the inefficient or significantly less efficient will be driven out of business;

(6) Would Threaten the Solvency -- and Jobs -- of Related Companies -- Impeding necessary layoffs by a financially troubled employer could threaten the jobs of those employees who would not be laid off because it threatens the financial solvency of the business altogether. Forcing unprofitable plants or marginally profitable but declining plants to continue operations could threaten the survival of parent companies or other subsidiaries that would otherwise remain viable because of the drain on capital by the unprofitable plant;

(7) Would Disadvantage Chances for Corporate Survival -- Prenotification provisions, such as those included in S. 538, could hasten the termination of an operation or become a self-fulfilling prophecy. Suppliers, creditors, key employees, and customers will adjust their relationships with the firm in a manner that may disadvantage the operation. Such prenotification may jeopardize attempts to sell the plant, attract new investments, refinance debts, or merge with other companies. It also may jeopardize bids for new contracts.

(8) Would Increase Investment in Foreign Countries -- S. 538 would increase the probability that American jobs will be lost to foreign countries. Ironically, legislation aimed at keeping American jobs where they are now would accomplish the exact opposite. Both American and foreign producers, when deciding on locations for new plants or expansion, would be less likely to build in the United States if they recognize that, once having built or expanded here, curtailing, relocating, or closing operations, if such actions became necessary or appropriate, would be difficult or impossible to implement. Both American and foreign companies thus would be provided an additional incentive to build and locate abroad, not in the United States; and

(9) Would Substitute Job Loss for Job Redistribution -- The restriction of plant relocations often would translate into no jobs instead of redistributed jobs. We should recognize that the transfer of jobs from one region of the country to another is far preferable to the loss of jobs altogether.

Clearly, plant closing legislation, such as S. 538, would raise more questions than it would answer, would cause more problems than it would solve, and would cost more jobs than it would preserve.

VI. POSSIBLE LONG-TERM CONSEQUENCES

Some indirect, long-range consequences of plant closing legislation could be extremely damaging to our economy.

If enacted, S. 538:

(1) May Lead to Government Subsidies -- Inefficient producers cannot continue to compete, even with higher pricing, unless they are subsidized by the government. Plant closing legislation, such as S. 538, therefore, contains a clear, though unexpressed, preference for inefficient production subsidized by taxpayers over efficient production taking place in the free markets. Several bills

introduced in the 99th Congress, like many bills introduced prior to the 99th Congress, expressly favored direct government subsidies for businesses threatened with plant closings or relocations, despite the disastrous experiences in such countries as Great Britain with taxpayer-subsidized companies. Either way, government policies that accept, sustain, and, in effect, encourage inefficiency promote the government practice of subsidization of losing business operations;

(2) May Reduce Incentives for Efficient Production -- Plant closing bills could prove to provide a disincentive for businesses to increase efficiency. Given a public policy of bailing out inefficient producers, the pressure on and incentive for companies to achieve higher levels of productivity and efficiency would be lessened. Federal and state assistance for companies unable to compete with more efficient firms might become accepted standard operating procedure; and

(3) May Detract from State and Local Government Programs -- Ironically, despite the fact that S. 538 would appropriate $980 million and give 70 percent of it to the states to administer and despite the fact that it gives state and local governments more authority and involvement in "proposals" to close plants or implement layoffs, S. 538 ultimately would decrease cooperation between state and local governments and the business community because S. 538 would detract from state and local government programs designed to enhance and expand business growth. Without the prospect of losing businesses to other areas of the country or foreign countries, local governments may be less inclined to maintain reasonable levels of business taxes or take other steps to enhance, keep, or attract business investment. The focus for some state and local governments inappropriately may shift from how to attract new businesses to how to "imprison" old businesses at their current sites.

Certainly there is a compelling incentive -- the preservation of tax revenues -- for local government units to delay and impede company closings and relocations or even mass layoffs. However, such economic strategies, although they may produce short-term financial gains, would be economically disastrous in the long run.

Employers do not and will not locate or expand operations in locations in which the governments are confrontational with business. Businesses do not consider local governments' pro-economic growth policies if those same governments then force businesses to negotiate with and indemnify the government every time management tries to implement layoffs or make any other economic decision that has employment consequences. Ironically, although S. 538 is intended to increase cooperation, in many instances it will increase confrontation, because it will place the local government in the same adversary relationship to the employer as the union. Although some provisions of S. 538, particularly in Title I, would increase collegiality, a fundamental flaw in the legislation is that it unnecessarily would pit governments against businesses. A good business climate at the local level -- one in which businesses will choose to open or expand operations -- is a climate of incentives for and cooperation with employers, not the implicit confrontation and adversary relationship that S. 538 would foster.

VII. THE SOLUTION TO THE PROBLEM OF WORKER DISLOCATIONS

Undoubtedly, plant closings can and do create a great deal of stress and hardship for affected workers and affected communities. While such effects are regretable, plant closings are most often necessary and are appropriate in a free market system, which has served as the basis for our country's economic strength and progress for more than 200 years.

In short, plant closings are as fundamental as plant openings to a dynamic economy. Profitability, productivity, and efficiency are not just goals for American industry -- they are requirements for business survival.

Nonetheless, the hardship and trauma of dislocated workers are a real problem in American society today -- a problem that is best addressed through effective education, training, and retraining programs, not through prescriptive plant closing legislation.

The solution to this problem is being developed and implemented as follows:

(1) Responsible Employer Practices -- Voluntary corporate practices and programs to mitigate the effects of plant closings on workers and communities are growing in number, effectiveness, and sophistication. Employers, when feasible, often provide early notification, severance pay, extension of medical and other benefits, liberalized pension provisions and eligibility, outplacement assistance and counseling, and retraining. The increased responsiveness and responsibility of the business community also are reflected in the increased cooperation with various interested parties;

(2) Retraining, Education, and Placement Programs -- While communication and cooperation with employees and, where applicable, the local union are essential, participation in existing federal, state, and local government programs that stress retraining, education, and job placement also can be extremely helpful. In this regard, many of the recommendations of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation, which issued its report in January 1987, will be effective when and if they are implemented. In the meantime, we must continue to use the measures available through the JTPA and unemployment insurance programs;

(3) Responsive Collective Bargaining -- The collective bargaining process increasingly is shifting its focus to issues of job security. Rather than wage and benefit increases, the primary goal of some unions, particularly in financially troubled industries, is preservation of jobs and maintenance of benefits in the event of layoffs. Notification, retraining, and relocation increasingly and appropriately have become the subjects of collective bargaining. Moreover, cooperative efforts toward increased productivity and concession bargaining have become prominent examples of the collective bargaining process adapting to current economic conditions. Good faith bargaining, on a two-way street between management and labor, has been and is preserving thousands of American jobs; and

(4) Economic Improvement -- Concentration on the causes of plant closings -- rather than on the consequences -- is more appropriate. While the economy has prospered in recent years and the recession of the late 70s and early 80s has ended in most industries and most parts of the country, we should note the causal nexus between Reagan Administration and Congressional reforms and the revitalization of American business. Legislation and regulation that encourage and enhance economic growth address the root of the problem of plant closings -- its causes. Plant closing legislation, such as S. 538, instead focuses on the consequences of a failing or unprofitable business. Policies to assure sustained economic growth in general, rather than the artifically sustained continuation of failing plants, go much farther toward preserving and creating jobs than wholesale government intervention into management decision-making.

In our dynamic economy, the parties involved already are addressing the problems created by plant closings and formulating the solutions.

Although the Chamber supports in concept the theory that incentives should be developed to encourage companies to provide prenotification voluntarily, we have reservations about the Administration's proposal to grant an unemployment compensation tax credit of $200 per worker when such notice is given in a timely manner. Such proposals as these undermine the experience rating concept that is designed to assess fairly and accurately unemployment costs to employers.

What is not part of the answer is plant closing legislation that would create industrial paralysis by giving vast new powers to local governments, labor unions, and nonunion employee representatives -- powers that correspond to what may be their incentives to impose impediments and delay fundamental management decision-making that disadvantages them. Such legislation would vitiate the freedom and flexibility necessary to economic decisions that most often are made of necessity and in a time-sensitive context. Plant closing legislation would handcuff employers' efforts to maintain profitability and, ultimately, would result in additional business failures with a corresponding permanent loss of jobs.

VIII. CONCLUSION

Management's ability to make judgments on workplace closings and relocations in the same manner as on other economic issues -- without burdensome and unwarranted government interference -- is essential. Federal, state, or local governments' involvement in these fundamental business decisions represents an increase in regulation at a time when more flexibility and less regulation is necessary.

Often what is at stake is survival of the company. Whether attempts to survive economically center on layoffs, however reluctantly imposed; discontinuation of an unprofitable product line; or relocation of operations to another facility, such decisions are *never* made lightly and are always made in the interests of maintaining competitiveness.

To handcuff employers -- delaying, impeding, sometimes effectively blocking management action -- would result in industrial immobility. The result would be institutionalization of lower productivity, imbalance in our collective bargaining system, and, ultimately, loss of many jobs -- some of which could have been preserved, many of which might have been relocated.

Such legislation as S. 538 would have just such results. S. 538 represents an assault on our economic system, on our collective bargaining system, on our legal precedents, and on our competitive way of doing business. It is "special interest" legislation that ostensibly benefits some regions of the country in the short run. However, it also clearly disadvantages other regions of the country in the short run and *all* regions of the country in the long run. It puts government where government should not be -- in the boardrooms of America, usurping management's prerogatives to make fundamental economic decisions regarding the well-being of their companies.

Ultimately, the issue is jobs. Plant closing legislation, such as S. 538, does *not* mean more jobs; it means fewer jobs.

Worker dislocation clearly is a significant problem in our country, one that needs to be addressed responsibly by all affected parties. The proposals of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation, as incorporated into the Reagan Administration's legislative and budgetary proposals, would represent a positive and effective step forward within the context of *voluntary* business responses.

However, mandatory prenotification and consultation requirements, such as those embodied in S. 538, are *not* part of the answer. Instead, they would exacerbate the problems of plant closings, layoffs, and dislocated workers.

The U.S. Chamber of Commerce respectfully urges Congress *not* to enact S. 538.

APPENDIX I

ANALYSIS OF S. 538, THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

Background

S. 538, The Economic Dislocation and Worker Adjustment Assistance Act, was introduced on February 19, 1987, by Senator Metzenbaum (D-OH) and is cosponsored by the other eight Democratic members of the Senate Committee on Labor and Human Resources and Senate Majority Leader Byrd (D-WV).

Title I - Dislocated Workers' Adjustment Services

Title I would abolish Title III of the Job Training Partnership Act (JTPA) and appropriate $980 million from general revenues to assist dislocated workers. Title I would establish a Dislocated Worker Unit (DWU) at the U.S. Department of Labor to distribute 70 percent of the funding to the states. The DWU would hold 30 percent of the funding in reserve for demonstration projects for retraining, job search assistance, relocation assistance, vocational education and on-the-job training, basic education and literacy training, and income support for those enrolled in training programs. Title I also would call for the formation of tripartite advisory committees at the state level.

The Chamber has no position on the specific budget level proposed, although we question the wisdom of increasing expenditures in this area, nearly four-fold ($230 million under the JTPA versus $980 million under S. 538), in view of today's budget and fiscal crisis. We believe that this bill does not go far to consolidate all existing programs. Noticeably absent from this legislation is the Trade Adjustment Assistance (TAA) program. In general, the TAA program provides the same type of assistance to the long-term unemployed. Consequently, it should be incorporated into any comprehensive program. The Chamber supports consolidation of all worker adjustment assistance programs and the elimination of single-interest, fragmented programs. After all, the issue should not be how an individual becomes unemployed but, rather, how to become reemployed.

Title II - Advance Notification and Consultation

Title II of S. 538 would require businesses with 50 or more employees to give advanced notice of "plant closings and mass layoffs" to employees or their representatives, state dislocated worker units (to be created under Title I), and local governments. The notice requirements are graduated, based on the number of employees to be displaced: 90 days' notice for layoffs of 50-100 employees; 120 days' notice for layoffs of 101-499 employees; and 180 days' notice for layoffs of 500 or more employees.

S. 538 also would require employers to consult and negotiate with union representatives or, at nonunion work sites, with employee representatives selected by the employees under procedures to be implemented by the states and with local government officials. S. 538 would require employers -- but not states, unions, or employee representatives -- to bargain in "good faith" and "for the purpose of agreeing" (to alternatives or modifications proposed by state, union, and employee representatives). This duty of bargaining not only would be highly subjective and open to litigation in virtually every instance, but also would far exceed any duty employers have under the National Labor Relations Act.

Employers also would be required to disclose substantial amounts of information during the consultation/negotiation period. The information to be provided includes justification for the closing or layoffs, the alternatives that were considered and the reasons for their rejection, any plans with respect to relocation of operations, any plans with respect to disposition of capital assets, and estimates of the anticipated closing costs.

An employer could be held liable to affected employees for back pay, reimbursement of medical and other "benefit" expenditures, and reimbursement of attorneys' fees and to the local government for a civil penalty of $500 per day.

Furthermore, two of the "new" provisions of this bill, which were not included in the plant closing legislation considered in the 99th Congress, present major problems for the business community: (1) a requirement to give notice to, consult with, and possibly be liable to local governments, which would be forced into an adversary relationship analogous to labor and management in collective bargaining, and (2) a requirement to "bootstrap" into existence "union" representation where no union exists for the purpose of negotiating with the employer on the employer's "proposal" for layoffs -- a process that would be extremely disruptive to the employment relationship and would contradict the principles of freedom of choice for workers regarding representation and the procedural safeguards of NLRA representation elections.

There is no question that, from an employer's standpoint, the mandatory prenotification and consultation provisions of S. 538 are far more objectionable than the requirements of H.R. 1616, The Labor Management Notification and Consultation Act of 1985 -- a bill that was defeated on the House floor after five votes and extensive debate as a simple 90-day notification bill on November 21, 1985. It is curious that proponents of this bill, in light of this earlier House action, have proposed a bill that is much more restrictive and objectionable to the business community. It is even more curious because of the extensive consensus recommendations of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation that were agreed to by representatives from labor, management, government, and academia. The Task Force did not recommend either mandatory prenotification or mandatory consultation.

The business community remains adamantly opposed to the consultation/negotiation requirements of S. 538 that place a much higher burden on employers to justify their business decisions and bargain in "good faith" than currently exists or has ever existed under federal labor law. These standards would be extremely hard to meet, would place the burden on the employer to prove compliance, and would invite litigation and extensive delay. This includes the possibility of court-ordered injunctive relief while it is determined whether an employer has met the unreasonably high burdens of prenotification, consultation, negotiation, and information disclosure.

Title III - Dislocated Workers' Demonstration, Exemplary, and Discretionary Programs

Title III of S. 538 would establish special demonstration projects to test new approaches to retraining and job creation. These demonstration projects include a federal loan program for training for dislocated workers and a public works employment demonstration program.

The Chamber supports the intent of Title III -- to assist dislocated workers in obtaining "employability" skills -- however, we question the logic of Part A: Dislocated Workers Training Loan Demonstration Program. Generally, dislocated workers are faced with immense financial and personal circumstances. The temporary loss of permanent employment places unique pressures on an individual who, generally, has few reemployment skills. This period of unemployment is a time that should be devoted to proven job reentry practices, (i.e., counseling, referral to remedial education and/or training programs, job clubs, and placement. Further, it is not a time to be encouraging entrepreneurial endeavors for which the individual has little chance of success; which would delay reentry into the work force; which could further discourage the unemployed worker; and which could increase related unemployment insurance costs.

EFFECTS ON LABOR-MANAGEMENT REALATIONS

If enacted, S. 538 would upset the balance in our labor-management relations laws in several significant ways. S. 538 would:

- Effectively "reverse" National Labor Relations Board (NLRB) and court decisions recognizing the fundamental right of employers to open and close businesses;
- Give organized labor a disincentive to participate in concession bargaining and increased -- and unfair -- leverage in the negotiation process;
- Provide an immense organizing advantage to unions because of the provision requiring states to implement procedures to select employee representatives to negotiations at nonunion workplaces; and
- Disrupt the already substantial requirements to bargain in good faith and the freely negotiated provisions in many collective bargaining agreements. The result would be legal chaos regarding the rights and responsibilities of the parties covered by these existing provisions.

The increased leverage of organized labor in collective bargaining would be substantial. By impeding companies' ability to transfer operations or implement reductions-in-force, unions would be insulated from the immediate adverse consequences of making unreasonable demands on businesses. Organized labor thus would be given a disincentive to participate in concession bargaining, increased leverage in the negotiation process, and immunity -- to the point of bankruptcy -- from the negative ramifications of a financially troubled business.

Even more alarming is the disruption that S. 538 would create by contradicting long-established labor law precedents. The NLRB and the courts have reaffirmed repeatedly the doctrine that an employer has a fundamental right to open and close its businesses. This doctrine would be "reversed" by S. 538.

The seminal decision is by the U.S. Supreme Court in First National Maintenance Corp. v. NLRB, 452 U.S. 666 (1981). In that case, the Court reviewed a doctrine analogous in many ways to prenotification. The Court recognized the harm which inappropriate prenotification can cause. At issue was whether federal labor law required an employer to bargain collectively regarding a decision to close or to relocate a portion of an operation. The Court said "no." In balancing the interests of the employees against those of the employer, Justice Blackmun, writing for the majority, noted that:

> [M]anagement may have great need for speed, flexibility, and secrecy in meeting business opportunities and exigencies. It may face significant tax or securities consequences that hinge on confidentiality, the timing of a plant closing, or a reorganization of the corporate structure. The publicity incident to the normal process of bargaining may injure the possibility of a successful transition or increase the economic damage to the business. (452 U.S. at 678-9)

The public announcement of a closing or relocation may jeopardize the ultimate survival of remaining operations because of the effect it may have on creditors, suppliers, customers, potential customers, key personnel, potential investors, and lending institutions. Furthermore, public disclosures of heretofore confidential information may place the affected operation and the parent company at a competitive disadvantage or may jeopardize the sale of the affected facility. Even the mandatory notification requirements (rather than the mandatory consultation requirements) of plant closing legislation, such as S. 538, thus are clearly contrary to the interests that have been carefully balanced under current case law. Furthermore, these prenotification requirements ultimately threaten the economic survival of financially troubled businesses.

APPENDIX II

THE CONTEXT OF PLANT CLOSING DECISIONS

Plant closing bills tend to be attractive politically because of the very tangible consequences of plant closings or relocations and the coverage that these consequences receive in the media. When a plant is closed or operations are transferred to another facility, the dislocations are visible: one can film the locked plant gates and interview workers who have been laid off. Conversely, one cannot photograph the plants that will not be built or interview workers who will not have jobs as a result of plant closing legislation.

Despite the fact that the plant closing issue can be emotionally and politically charged, put in perspective, this issue is neither simplistic nor singular. Many interests are at stake, and many factors influence the decision to close or relocate a plant.

The causes of and the problems created by the closing of a facility affect not only rank-and-file employees and the community but also management employees, stockholders, suppliers, investors, creditors, and related companies, divisions, and subsidiaries. The interests at stake are complex and diversified. For example, the fiduciary responsibility of a company to its stockholders or the financial responsibility of a company to its creditors may necessitate a decision to cease operations at an unprofitable plant.

Similar to the diversity and complexity of the constituencies with a stake in the profitability of a local plant are the diversity and complexity in the factors influencing the decision to close or relocate. These factors include the following:

- proximity and accessibility to markets;
- costs of utilities and transportation;
- access to investors and institutional capital;
- ability to recruit key personnel;

- access to academic leaders and facilities for consulting or research and development;
- labor costs;
- necessity or advisability of automation;
- necessity of vacating decaying or inadequate physical plants;
- climate;
- foreign competition;
- access to and cost of natural resources; and
- the regulatory and tax advantages/disadvantages of a particular state or locality.

The ultimate factor, of course, is the ability to compete. Employers are not inclined to close profitable businesses and are inclined -- or more accurately, forced -- to close unprofitable ones.

APPENDIX III
THE OPPOSITION'S ARGUMENTS

(1) Some proponents of S. 538 claim that employers are motivated only by money and are leaving profitable plants for still higher profits at other locations.

Counterpoint: Employers do not close profitable, efficient plants -- they can be used or sold. Most plant closings or layoffs are those of financially troubled employers and are necessary responses to deficiencies in profits and productivity.

(2) Some proponents of S. 538 claim that employers are relocating from the "rust belt" to the "sun belt" simply to "break" their unions.

Counterpoint: Employers sometimes can and sometimes cannot relocate operations from a union plant to a nonunion plant. The issue is controlled by the National Labor Relations Act as interpreted by a series of cases, including Supreme Court decisions. The rights and equities of the various affected parties have been balanced adequately and appropriately by the courts.

(3) Some proponents of S. 538 argue that it is necessary to save jobs.

Counterpoint: Prenotification does not save jobs -- profits do. For example, the plight of the steel industry is unrelated to prenotification or consultation. Ultimately, S. 538 is not a jobs bill.

(4) Some proponents of S. 538 say that prenotification is appropriate simply on the basis of fairness.

Counterpoint: Prenotification is fair and, when feasible, a common practice among employers. The problem is that notification far in advance often is infeasible. The plight of financially troubled employers often changes day-to-day pending results on major contract bids, financing efforts, and attempts to attract new capital. Sometimes prenotification would hurt employees other than those being laid off because it would contribute to further financial decline and ultimately cost more jobs. Furthermore, layoffs for a large corporation in a volatile market often occur weekly and without significant foreseeability. Mandatory prenotification also would create a disincentive for unions to participate in necessary concession bargaining, because unions would be reassured that no changes could be implemented until after the employer had complied with the time-consuming requirements of S. 538. The union might delay serious bargaining until the employer first gave notice of intended layoffs.

U.S. CHAMBER OF COMMERCE

Business-Government Policy Department

March 26, 1987

Jim Brudney, Esq.
Chief Counsel
Subcommittee on Labor
Committee on Labor and Human Resources
608 Hart Senate Office Building
Washington, D.C. 20510

Dear Jim:

I am responding, on behalf of Allan Thieme of Amigo Sales, Inc. to the questions which were posed by the Subcommittee as a followup to the March 10 hearing on the plant closings issue at which Mr. Thieme testified on behalf of the U.S. Chamber.

(1) In regards to the question whether injunctive relief would be available to employees or local government officials under S. 538, the answer is "yes."

The remedy provisions of S. 538 do not define the remedies available to plaintiffs as "exclusive" remedies. In fact, S. 538 acts quite to the contrary, stating in Section 206 that:

> The rights and remedies provided to employees by this title are in addition to, and not in lieu of, any other contractual, statutory, or other legal rights and remedies of the employees, and are not intended to alter or affect rights and remedies available under existing laws (emphasis added).

Section 206 not only does not prohibit injunctive relief, it in effect encourages petitions for injunctions and leaves their application to the discretion of the courts.

This is particularly true in light of the Supreme Court's holding in Califano v. Yamasaki, 442 U.S. 701 (1979) that:

> Absent the clearest command from Congress to the contrary, the federal courts retain their equitable power to issue injunctions in suits over which they have retained jurisdiction.

It is clear that federal district courts would retain the authority to grant preliminary injunctive relief to prevent an irreparable injury in order to preserve the court's ability to render a meaningful decision after the trial on the merits. Of course, it is not necessary for an aggrieved person to prove a violation to obtain interim relief. Rather, all that need be established is that there is a likelihood of prevailing on the merits and that failure to provide such relief, pending final disposition of the case, will cause irreparable injury. A trial on the merits can take several months or even years to ultimately resolve, with the preservation of the status quo by the courts to the decided advantage of those employees who would have been laid off and substantial disadvantage of the employer.

Given that S. 538's consultation/negotiation requirements place a much higher burden on employers to justify their business decisions and bargain in "good faith ... for the purpose of agreeing" than currently exists or has ever existed under federal labor law, the ability of employers to disprove plaintiffs' charges of noncompliance and avoid court-ordered injunctive relief would be limited. Employees who are about to lose their jobs would not only have the incentive to delay implementation of layoffs, they would have the ability to do so. The potential for a deliberate strategy of delay through litigation would be a substantial threat to financially-troubled businesses.

(2) In regards to the question as to whether the Chamber's opposition to S. 538 as "special interest" legislation is inconsistent with the Chamber's qualified support for the Administration's worker adjustment assistance proposal, the answer is "no."

The Administration's proposal reflects a consensus approach taken by Secretary Brock's Task Force on Economic Adjustment and Worker Dislocation. In good faith, and recognizing that this proposal was agreed to by a broad philosophical spectrum of Task Force members nearly unanimously, including all of the union and management representatives, the Chamber conceptually supports this initiative as a response to the critical problem of worker dislocations.

However, Title II of S. 538 represents a betrayal of this consensus approach, and fails to acknowledge that a $980 million federal program may vitiate the "need" for mandatory notice and consultation/negotiation requirements. To the extent that these provisions would benefit a relatively small member of workers to the detriment of more numerous workers, employers, and our economy at large, Title II of S. 538 is, in fact, "special interest" legislation which the Chamber finds highly objectionable.

I hope these responses are useful in your consideration of this legislation.

Sincerely,

Mark A. de Bernardo

Mark A. de Bernardo
Manager of Labor Law and
Special Counsel for Domestic
Policy

Senator Metzenbaum. Mr. Thieme, let me first compliment you. I think you are a good example of the free enterprise system and the free enterprise system working well. I think you are a small employer with a real community-minded responsibility, and I think you represent thousands of other small employers who fit into that category.

We are concerned about small business, and we do not want to do anything in this Committee to adversely impact small business. So I would say to you that we do not look at the problem as being you on one side, and ourselves on the other side. We are prepared to reason, to work with small business, we are prepared to work with larger corporations as well. We do not see this legislation as an attempt to be hurtful, to be punitive, to do anything that provides an impediment to the free enterprise system.

I came out of that system myself, before I came to the United States Senate. So I would say to you, let us not conclude that you are one place, and we are another place. We are prepared to sit down and try to work out with you and those you represent, any problems that appear to be intolerable, to see that we do not place any unnecessary new burdens on the business community.

Senator Simon.

Senator Simon. I would concur completely with what Senator Metzenbaum had to say. I think a properly drafted plant closing section can in fact lower unemployment insurance costs for small businesspeople. I used to be in your kind of a situation. I was in business. I do not want to do that.

Mr. Doyle, I appreciate your constructive comments. I appreciate the policy of General Electric on plant closings and layoffs. Your suggestion that we make a differentiation between the layoffs and plant closings, I think, is a constructive suggestion.

I am going to be asking for a few people from both labor and management to get together and see if we cannot work out some practical compromises, and you are going to get an invitation to be one of those people.

I thank both of you, and I thank you, Mr. Chairman.

Senator Metzenbaum. Thank you very much, Mr. Doyle and Mr. Thieme. And thank you, Mr. Irving, for your willingness to return on the 26th.

That concludes today's hearing. If we have additional questions—and we may—we will submit them to you in writing and hope that you will be good enough to respond, and they will be included in the record.

[Additional material supplied for the record follows:]

Before the

UNITED STATES SENATE
COMMITTEE ON LABOR & HUMAN RESOURCES
SUBCOMMITTEE ON LABOR

APRIL 7, 1987
WASHINGTON, DC

Statement of the

AMERICAN TRUCKING ASSOCIATIONS

On

S. 538 — ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

Thomas J. Donohue
President & Chief Executive Officer

INTRODUCTION

The American Trucking Associations submits this statement in opposition to the notice and consultation provisions contained in Title II of S. 538, the Economic Dislocation and Worker Adjustment Assistance Act of 1987. Through its 51 affiliated trucking associations located in every state and the District of Columbia, 10 affiliated conferences, and several thousand individual motor carriers, ATA represents every type and class of motor carrier in the country: for-hire and private; regulated and exempt.

The American trucking industry provides an essential transportation service to the largest economy in the world. Employing more people, handling more freight and traveling more miles than any other transportation mode, it is the largest form of transportation in the country.

In the last ten years the trucking industry, like American business as a whole, has experienced economic conditions that resulted in large numbers of plant shutdowns and employee layoffs. No one welcomes these occurrences, nor can anyone dispute the desirability of taking every step possible to ameliorate the effects of such events. Thus, ATA supports the principle of providing retraining and placement assistance to workers affected by economic dislocation, the stated goal of S. 538.

Where we part company with the bill's proponents is with its inflexible notice and consultation provisions, which would impose enormous burdens on business and bring about results inimical to this goal. Economic reversals do not occur according to prescribed formulae. Consequently, there is no universal prescription for correcting such reversals. On the contrary, business needs the flexibility to address each problem according to its own unique circumstances.

DESCRIPTION OF THE TRUCKING INDUSTRY

S. 538 would require that companies give a minimum notice of 90 days before undertaking a plant closing or "mass layoff". The trucking industry has certain characteristics that make it infeasible, if not impossible, to comply with this inflexible notice and consultation standard. First and foremost is the fact that the sole service that trucking operations provide is moving shippers' goods from one point to another. Thus, trucking companies must be able to adjust their employment levels to accommodate freight orders received from shippers. As discussed below, shipping volumes may fluctuate on a monthly, or even a weekly basis. When shipping orders are high, truckers need sufficient numbers of employees to move freight quickly. Conversely, when orders drop, companies need the flexibility to lay off employees temporarily, thus avoiding the payroll costs for employees who are temporarily not producing revenues.

Second, trucking companies, in particular less-than-truckload (LTL) carriers, must be able to locate where they will be able to move freight efficiently. LTL carriers, operate out of a hub system, which is a complex network of terminal facilities. In the LTL business, small trucks are dispatched to pick up freight at the shipper's docks and transport it to a terminal, where it is loaded and shipped to a destination terminal. At this point, the process is reversed and the freight is placed in smaller trucks for delivery to consignees along a specific route. It is important that LTL carriers locate near major roads and highways.

This bill could impede the ability of carriers to relocate when circumstances, such as highway construction, make a terminal location obsolete. Under one reading of the bill, an LTL company operating in the D.C. area could be required to give notice even if its management decided to close a terminal in Fairfax County and relocate it in Prince George's County, if this were construed as an involuntary employment loss.

RECENT HISTORY OF THE TRUCKING INDUSTRY

As stated above, in the last ten years the trucking industry has experienced significant turmoil and change. While American industry in general has had to endure the economic recession of the early 1980's, the trucking industry's problems have been exacerbated by passage of the Motor Carrier Act of 1980 (MCA), and by higher insurance premiums and increased taxes.

The main goals of the MCA were to enhance competition by easing entry requirements into the trucking industry and increasing the availability of price/service options, a process that had already begun through ICC action. Price competition following its passage became intense. Moreover, in the twelve months following passage of the MCA, approximately 30,000 requests for new or modified operating authority were filed with the ICC.

During this period, the recession was taking a toll on trucking in the form of downward trends in profit margins, volume of intercity motor freight traffic (particularly among carriers of general freight), and a resultant decline in industry employees.

Although the number of for-hire companies has increased over the past ten years, the industry has experienced high rates of bankruptcies, mergers, cessations of operations, and reductions in operations. Between 1978 and 1986, for example, Dun & Bradstreet figures show that the number of for-hire carriers increased from 67,000 to 85,000, almost 27 percent. During the same period, the number of carrier failures rose from 162 to 1548 per year. Over two-thirds of these failures occurred between 1983 and 1986, an indication that the trucking industry did not expand along with other segments of the economy. Moreover, in 1986 the failure rate for trucking companies was 182.1 per 10,000 companies, compared to 120 per 10,000 for all businesses.

In sum, the past ten years have been far from rosy for the trucking industry. In order to address the problems associated with the recession and to position themselves to compete in a deregulated market, companies have had to make any number of changes in their operations. Among their competitive responses, companies have curtailed or terminated service to areas previously served, altered the kinds of commodities they carried or changed the manner of transport (e.g., from less-than-truckload to truckload). To accomplish these ends, companies were bought and sold, mergers occurred, and many companies simply ceased operations. A natural consequence of such changes were duplications in personnel and terminals, which necessitated closing some operations and either relocating or terminating employees. These companies would have been severely hamstrung if their responses had been limited by the notice and consultation requirements of S. 538.

TYPICAL TRUCKING COMPANIES' REACTIONS TO S.538

ATA's objections to S. 538's notice and consultation provisions are not simply theoretical assertions. A number of our members confirm that a minimum 90-day notice and consultation with government and employees is unworkable in a typical trucking operation. As an industrial relations manager for a large midwestern company puts it:

> During the early 80's, we were forced to move two large terminals, one in the sunbelt and the other in the midwest. We closed these terminals not to take any punitive measures against our employees, but simply to go where the work was. We were, and remain a union company, and we made the move according to provisions of the national master freight agreement, which protects our employees.
>
> If we had had to abide by this bill's requirements, we would have been severely affected by loss of market share in these two markets. The very nature of our business makes it impossible to predict shutdowns and layoffs in most cases. Our schedule depends upon the needs of the shipping public. If shipping orders taper off or are cancelled, we simply have no need for a large labor force, and simple arithmetic dictates that we can't pay employees just to be available in case we need them. We have to be able to lay off with short notice.

A president of a much smaller firm, also alluding to truckings' ties to shippers, makes the same point. Truckers, he says, must locate where shippers locate. Consequently, if a shipper shuts down a facility, and moves it to a new location, a trucking company servicing the shipper may be required to move its terminal quickly to remain near the shipper, and thus remain competitive. The need to react quickly to shippers also makes it rarely possible to predict the length of layoffs. Thus, because industry layoffs tend to be of "indefinite duration," trucking firms would be required to comply with S. 538 each time they faced layoffs. This same executive indicates that one effect of S. 538 could be that smaller companies might resort to using more leased employees to avoid the 50-employee limit.

We also heard from the president of a company that is reorganizing under Chapter 11 of the Bankruptcy law. He explained that prior to filing under Chapter 11, his company was a LTL general commodities carrier employing over 3,000 people throughout the midwest and eastern United states. The company owned 67 terminal facilities, and had annual revenues in excess of $160 million. The company is now operating as an intrastate company with 50 employees working from three facilities. Its annual revenues is approximately $3.5 million. According to the company president, it went into Chapter 11 for three primary reasons: continued losses; a major lender "pulled the plug"; and a consequent shortage of capital.

He said that the company complied with the notice provisions contained in its union agreement, and it was a comparatively orderly process. This company president opined that if he had been forced into a more lengthy, cumbersome consultation process prior to filing his Chapter 11 petition, his business would have completely deteriorated and there would not be even a downsized company today.

As suggested above, aside from deregulation and the recession, there are certain characteristics of the trucking industry, such as its dependency on shippers, that make rigid notice and consultation requirements infeasible. For example, freight volumes show wide fluctuations, certainly throughout the year but also within a given month and even a week. Large consolidation centers that may employ 500, 600, or 700 drivers and dock workers during peak traffic periods can easily see that figure drop by "50 or more employees" often in the span of a week (and certainly "during any 30-day period" as specified in the legislation) during slower work periods. Although many of these individuals may not be considered "full-time" employees, they certainly do "in the aggregate work at least 2,000 hours per week." A literal reading of S. 538 would trigger the notification and consultation requirements for such operations on a weekly basis, a result that would unreasonably affect their business practices.

Another problem relates to trucking equipment. Probably in no other industry is the sole means of generating revenue so tightly regulated as the truck is in our industry. Any changes made by Federal, state or local governments in vehicle sizes, weights or other factors relating to the vehicle (e.g., hazardous materials routing) can impact employment levels. The imposition of operating restrictions on certain types of equipment (e.g., twin trailers) often necessitates extensive rerouting, which in turn may require transfer of drivers from one location to another. Conversely, the lifting of a restriction (e.g., the Wyoming Demonstration Project, a project under which Congress permitted tractor semi-trailer combinations to exceed the normal weight and length limits on interstate highways) can have the same effect.

Another carrier related the following story highlighting the problems it would have faced had the notification and consultation provisions of S. 538 been in effect several years ago, when an action by the federal government threatened the viability of the company's largest facility:

> Because the federal government imposed a ban on all commercial vehicles operating on a highway which directly served the terminal, our company was faced with the difficult task of attempting to reroute virtually all its traffic to and from the northeast within days of the imposition of the ban. This "change of operation" was handled in accordance with procedures outlined in the National Master Freight Agreement but would have been made immeasurably more difficult, if not impossible, with the additional burden suggested by S. 538.

The experiences of each of the carriers discussed in this statement reflect the fact that the unionized portion of the trucking industry has made provisions to give notice to affected employees. The National Master Freight Agreement creates a "change of operations committee" with whom companies must consult before mass layoffs or terminal closures. It also provides that in such circumstances employees may "follow the work." This Agreement reflects the experience of management and union officials who are intimately familiar with the economics and practicalities of trucking company operations. There simply is no need for government to override this process.

CONCLUSION

The complexities and economic climate that govern the trucking industry make the regimented notice and consultation system created by S. 538 infeasible. There are many indications that the industry may experience additional bankruptcies, mergers, and reductions in operations. The ability to survive economic challenges depends not only on management know-how, but also speed and flexibility in problem solving. Without these management prerogatives, business arrangements may be jeopardized, and customers, credit sources and even key employees may be lost, thus assuring loss of jobs and all of their attendant costs.

The ATA, therefore, urges the committee to reconsider the notice and consultation provisions contained in this bill. These provisions make no contributions toward retraining and adjustment assistance to employees. On the contrary, they are likely to assure the failure of companies that otherwise might be saved, and create an even bigger need for employee assistance.

STATEMENT

OF THE

FOOD MARKETING INSTITUTE

ON S. 538

THE ECONOMIC DISLOCATION AND

WORKER ADJUSTMENT ASSISTANCE ACT OF 1987

SUBMITTED TO THE

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY

AND THE

SUBCOMMITTEE ON LABOR

SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

APRIL 8, 1987

1750 K Street, N.W.
Suite 700
Washington, DC 20006

The Food Marketing Institute (FMI), on behalf of America's retail grocers and grocery wholesalers, appreciates the opportunity to present its views on the Economic Dislocation and Worker Adjustment Assistance Act of 1987, S. 538.

FMI is a nonprofit association conducting programs in research, education and public affairs on behalf of its 1,500 members -- food retailers and wholesalers and their customers in the United States and overseas. FMI's domestic member companies operate more than 17,000 retail food stores with a combined annual sales volume of $150 billion -- half of all grocery sales in the United States. More than three-fourths of the FMI's membership is composed of independent supermarket operators or small regional firms. Its international membership includes more than 150 members from 40 nations.

Enactment of this legislation in its current form would be a disaster for our industry and our employees. The economic circumstances that prompt this legislation simply do not apply to the food distribution industry. Because of the dynamics of our industry, the mandatory advance notice and consultation called for in the bill would be unworkable and counterproductive.

The recent hearings and the entire debate about plant closing legislation have focused on the manufacturing sector of our country's economy. Indeed, the term "plant closing" itself conjures up an image of a huge steel mill or manufacturing plant, yet the legislation defines employer as "any business enterprise...." It is not realistic to include retailing, especially food distributors, in the same context as large-scale manufacturing. The economics and dynamics of retailing and manufacturing are very different. Yet S. 538 does not recognize differences among industries. The Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation focused on manufacturing when it considered mandatory notice. Proponents of the bill focus on manufacturing when they argue about the need for mandatory notice. But the shotgun of mandatory notice in this legislation is going to hit one of our most dynamic and innovative industries -- food distribution.

FMI and it members agree that as much notice as possible for all concerned is a desirable goal whenever a plant or store is closed. But a fixed notice period covering all circumstances simply makes no sense. Indeed, many of the states that have considered this issue have reached this conclusion. Massachusetts' plant closing law calls for voluntary notice and recently the New York Compact adopted this same voluntary approach.

The rationale for plant, or store, closing legislation does not apply to the food distribution industry. First, we are a job producing industry. We are not a declining industry -- a major theme in the plant closing debate. According to the Bureau of Labor Statistics (BLS), in 1973 there were 2.416 million people working in food stores and grocery wholesaling. In 1985 there were 3.513 million. Comparing all industries, the BLS reports food stores were in the highest job-growth category in America during this period. Jobs are being created at a faster pace in our industry than just about any other segment of the economy.

As part of our testimony we would like to submit an article by Steven E. Haugen, an economist with the Bureau of Labor Statistics, that appeared in the August 1986, Monthly Labor Review. "The Employment Expansion in Retail Trade, 1973-85" graphically illustrates a segment of the American economy whose growth and whole character stand in vivid contrast to the industries that are the premise of the proposed legislation.

Second, the grocery industry in America is marked by ongoing innovation and change in the size and format of stores. This is a process that would be stifled by mandatory store closing notice requirements. "Store closings" reflect the fact that new stores are constantly being built. Super stores today are over 60,000 square feet and employ more people because of customer demand for labor-intensive services like bakeries and delis. Often stores are simply sold to other operators who remodel and reopen them. In this process, jobs do not leave a community. While small grocery stores have declined in number from 98,520 in 1981 to 45,400 in 1985, the number of supermarkets have increased from 28,680 to 30,505, and the number of convenience stores from 37,800 to 78,095. The total number of food stores of all kinds went down from 167,000 to 154,000 from 1980 to 1985. In this same time period, food store and grocery wholesaling employment rose from 3.039 million to 3.513 million.

In 1985, 3.1 percent of all supermarkets were newly opened, 4.2 percent were closed, 2.3 percent were acquired, and 9.9 percent received major remodelling. The average age of a supermarket building in 1985 was only 6.7 years. This startling figure vividly demonstrates the vitality of our industry. "Store closing" legislation would inhibit this vitality.

Third, unlike a middle-aged, highly skilled auto worker, who is the typical worker cited in the plant closing debate, supermarket employees tend to be young. The BLS reports that in 1985, 40 percent of all workers in retail trade were under 25 and that this is twice the percentage of the country's overall workforce. In addition, the grocery industry is marked by high employee turnover -- around 50 percent in most cases.

Further, in 1985 the average supermarket had more part-time employees than full-timers. Food retailing is a 24-hour-a-day, seven-day-a-week business. As a result, a high proportion of employees are part-timers. Schedules can be flexible, which is convenient for many women with families and for young people in school. The grocery store, and other retail stores too, represent a significant number of entry-level opportunities for young people to enter the job market. The story of a high school or college student working part time behind a cash register or stocking shelves is as American as apple pie. Today, the demand for these young employees is greater than ever. In fact, because we are a growth industry, supermarket operators are having trouble attracting and retaining employees. At a recent meeting of FMI members in Cleveland, the second-most important issue to them was the shortage of entry-level employees. Another major concern was employee retention. The fact is that a supermarket employee who loses her job because the store is closed is in most cases readily employable. She has a skill that is in great demand. She is in no way like the steel mill worker who needs complete retraining.

Fourth, the economics of retailing are totally different from other industries. A grocery store is viable as long as there is a customer base in the community. It depends on the community. It is not as dependent on factors involving international competitiveness, distant markets, long-term contracts, nor the value of the dollar. On a day-to-day basis, a grocery store owner is dependent on attracting people to come through his doors versus a competitor's around the corner.

The grocery industry is based on high volume and low profit margin. The average product turns over 19.97 times a year. Bread, milk and other perishables turn over much faster. The operating profit after taxes as a percent of total sales for the industry in 1985 and 1986 was 1.19 percent -- about a penny on the dollar. At this pace, business viability can change quickly; a store owner can start losing money fast. It is not like a manufacturer with inventory, long term contracts and future delivery dates.

Consider what happens when a hypothetical grocer, losing $10,000 a week, announces the store is closing.

- The employees will find other jobs, the best ones leaving first -- perhaps for the nearby competitor who put the grocer in the jam;

- Second, credit will dry up. Grocers cannot operate solely on cash, the constant product turnover requires constant credit to keep product on the shelf;

- Third, pilferage will increase -- unpaid-for groceries will go out the front and the back doors at an increasing pace;

o And last but not least, the customers will disappear. Once the word is out customers head across the street to the competitor, and this process accelerates as stocks and service decline. The grocer losing $10,000 a week will spend the next several months losing even more money, perhaps even forcing personal bankruptcy.

The operating premise of all supermarkets today is high volume, and they can only operate one way -- 100 percent. Either a store is open for business or it is closed. It cannot phase out, slow down gradually. A closing grocery store does not have a "going out of business sale," "milk 1/2 price." A grocery store is like a helicopter -- as long as it is flying it is fine, but it cannot glide. If the engine stops, it drops like a rock. This is why advance notice cannot be mandated.

But, backing up for a moment, if a store is in trouble, the owner can take corrective steps, and closing is the last and least likely avenue. More often than not his troubles are due to competition from another grocer. The grocer has built his business as a part of the community, and he knows his customers. His first move is to take any number of steps to get them back. He will consider strategies involving pricing, services, layout, product mix, hours, store appearance, store expansion, and advertising, among others.

If these steps fail, more often than not the owner will sell the store. This is again in marked contrast to what happens in other industries faced with impending failure. One of the reasons given for the need for advance notice and consultation is to get local government involved in finding a buyer or new user for the plant building. This is not necessary in the grocery industry. A grocery store building, retail space, is a very marketable item. The owner has every incentive to sell it while it is still open, to show customer traffic, that it is a viable business. The value goes down if the property is closed. Selling a closed retail facility is like trying to sell a car with no battery and four flat tires. And regarding notice, once a deal is agreed to, both parties want to make the transition as quickly as possible.

Finally, we would like to comment briefly on the consultation provisions in S. 538. As many others have noted, these provisions are obviously aimed at preventing plant, or store, closings. Grocers and other employers can easily be hamstrung by labor for not consulting "in good faith" over "alternatives" to the closure. The requirement that local government be consulted, in particular, would prevent most store closings. What local politician would allow a neighborhood grocery store to close?

Plant closing legislation is supposedly meant to help America be more competitive in the world economy. The worker adjustment assistance titles of S. 538 can be important and helpful toward that end. But as far as the grocery business is concerned, American's food distribution industry is the world's leader in productivity, innovation, competition, and efficiency. America may have lost the edge in automobiles, steel, and other industries, but not in food. American's devote a smaller portion of their disposable income to food than people in any other developed country. In 1984, an average of 10.8 percent of American consumers' disposable income went for food and beverages consumed at home. This figure has been steadily declining over the years; it was 20.2 percent in 1930. This shows how competitive the industry is -- the kind of productivity and competitiveness we wish our declining industries could muster. We have constantly been modernizing, moving, closing, opening and innovating. The flexibility of grocery store operators to be able to do so -- to be willing to take a risk on a new store and format, or on remodelling an old location -- would be eliminated by this store closing legislation.

For all the reasons above, the Food Marketing Institute urges the Committee to delete mandatory advance notice and consultation from the Economic Dislocation and Worker Adjustment Assistance Act of 1987. Thank you for the opportunity to submit our views.

Whirlpool
CORPORATION

Administrative Center

BENTON HARBOR, MICHIGAN 49022

March 16, 1987

The Honorable Howard M. Metzenbaum
United States Senate
Washington, D.C. 20510

Dear Senator Metzenbaum:

It's our understanding that there is a strong effort underway to move the Economic Dislocation and Worker Adjustment Assistance Act (S. 538) through committee and onto the Senate floor as early as mid-spring. Considering the momentous consequences of this kind of legislation, the issue needs vastly more public scrutiny and deliberation before hasty enactment. Whirlpool opposes S. 538, and asks that this letter be included in the public record.

S. 538 would require businesses to give up to 180 days advance notice before closing a plant operation or laying off 50 or more employees. In addition, employers would need to comply with a number of procedural steps in consulting with employees and communities before implementing its decision. Failure to comply would trigger severe financial penalties and civil fines.

Although the legislation is well-intended, it is, nonetheless, ill-conceived. Indeed, Whirlpool agrees and has lived within the spirit of the bill. We believe that, whenever possible, employers have a responsibility to advise employees and local and state governments well in advance of a plant closure or significant layoff. Over the past five years, for example, Whirlpool has been faced with no fewer than seven decisions involving closing a plant facility and/or relocating manufacturing operations as part of a larger consolidation plan to remain competitive. In each instance, the company notified the affected employees and communities up to two years before taking the action.

At the same time, circumstances surrounding a particular decision could make advance notification impossible (e.g., unforeseeable events or a sudden technological breakthrough) or unwise (to a company's competitive disadvantage). Employers must, therefore, be allowed to exercise their management prerogative without government interference.

S. 538, however, goes well beyond mere advance notification. It burdens employers with such onerous penalties and administrative mandates that compliance could make it virtually impossible for any U.S. employer to ever respond to U.S. or global economic realities. The legislation is so laden with legal booby traps that employers could inadvertently fall out of compliance while attempting to live within the spirit of the law.

Following are some of the major areas of concern we have with the legislation:

1. Unreasonable Threshold

   Whirlpool Corporation and its subsidiaries employ some 25,000 employees nationwide. At some of our larger facilities the 50-person layoff threshold that would trigger compliance represents less than 2% of total employment at the plant. In a dynamic economy, especially in the appliance industry, unpredictable swings in consumer demand could easily result in layoffs of 50 or more employees a number of times a year.

   The occurrence of layoffs like this does not mean affected employees "go bare" without financial or medical benefits. We continue to provide company-paid medical benefits, along with financial support through employer-paid state unemployment compensation benefits. In cases of plant closings, we provide job retraining for those who wish to participate, as well as severance compensation and extended medical benefits for all affected employees.

2. Consultation and Bargaining Duties

   The nucleus of S. 538 is the mandate to consult and bargain with community officials and affected employees. That provision empowers either affected party to construe spurious legal challenges to forestall or forever block a legitimate management action.

   The legislation requires employers to "bargain in good faith" to arrive at an alternative course of action, but does not impose a similar requirement on other parties. If the affected parties charge "bad faith" -- whether for a legitimate or abusive reason -- they could freeze the closure or layoff decision by obtaining injunctive relief in federal court.

   Our management's decision to reduce its workforce or close a plant is made only after considering all viable alternative courses of action. We do not lay off workers because we want to, but are forced to by economic necessity -- to remain competitive. These decisions -- always difficult where the livelihood of people is concerned -- are made in a socially sensitive manner. To require management to reassess its decision in an open forum would likely raise public expectations the company could not realistically fulfill. That would exacerbate an already delicate atmosphere.

3. Duty to Disclose Information

The Act would also require employers to open up its books, records, internal memorandums, studies and any other sensitive information as part of its "duty to consult in good faith." Failure to do so, regardless of reason, subjects the employer to charges of "bad faith" bargaining and could lead to a court injunction. Even the private records of a subsidiary's parent company could be open to public scrutiny.

In a democratic, private enterprise system this infringement would be unconscionable. Sensitive business records, in the hands of an unscrupulous or spiteful public or labor representative, sold for personal gain or a vendetta, could severely damage or potentially threaten a business's viability as well as the livelihood of its other employees.

4. Financial Penalties

The Act could impose punitive and unreasonable financial penalties and civil fines if the employer is found to be in violation of Sections 202, 203, or 204. The fullest extent of damages could be up to three (3) years of back pay (including all benefits) for each affected employee and $500 a day in civil fines.

The cost to a company employing only 50 people, each earning $400 a week (including benefits), would amount to $62,400 per employee, or over $3 million for its 50-person workforce. In addition, three years of civil penalties would build to over $500,000. A small company, already on the brink of financial ruin, would likely find it impossible to assemble $3.5 million to pay these penalties. Faced with this potential liability, companies may refuse to make necessary business decisions today that could unvoidably lead to their demise in the future.

Conclusion

S. 538 is poor public policy. Its principle thrust is to interject government and labor into what should be the independent decision-making process of management. Temporary downturns in the marketplace are an economic fact of life. Management must be unfettered in responding to market and global forces to remain competitive. To force U.S. business to keep employment levels needlessly inflated, to produce unneeded products, will widen the cost gap that already exists between many U.S. and foreign goods.

Likewise, to limit the legislation's impact by establishing a 50-person trigger threshold is arbitrary. Whether 10 or 100 or 1,000 employees are affected is irrelevant. A threshold of any sort is philosophically objectionable.

S. 538 is a medicine far more toxic than the disease. It is also misdirected. It ignores favorable employment demographics occurring throughout the U.S. economy. Since 1980, U.S. businesses have created nearly 9.8 million net new jobs -- an achievement unmatched elsewhere in the world! While it is true that about 1.1 million jobs diminished in the manufacturing sector, nearly 10.5 million new jobs were created in the service sector. This shift is indicative of the growth of service industries in the U.S. economy.

The solution is not to erect legislative barriers to halt the movement of jobs away from a manufacturing dominated economy. Rather, it should be to prepare workers with meaningful job retraining to make transitions to the service sector less stressful.

We believe enactment of plant closing legislation will ultimately create a backlash. Rather than preserve jobs, this legislation will accelerate the loss of U.S. jobs. Any attempt to prevent -- even penalize -- managers in fulfilling their fiduciary responsibility will spur the movement of manufacturing operations out of the U.S. and into freer nations. Under that scenario, we all lose.

Whirlpool is unalterably opposed to plant closing legislation in any form. Its enactment would be an economic and social disservice to all facets of American society. We urge you to reject this legislation, and to encourage your colleagues to do likewise.

Sincerely,

E. R. Dunn
Vice President
Human Resources

ERD/tsf

UNITED STATES SENATE
COMMITTEE ON LABOR AND HUMAN RESOURCES
SUBCOMMITTEES ON LABOR,
EMPLOYMENT AND PRODUCTIVITY

Joint Hearing on the)
Economic Dislocation and) S. 538
Worker Adjustment)
Assistance Act)

TESTIMONY OF THE AMERICAN BAKERS ASSOCIATION

Chairman Metzenbaum, Chairman Simon, and Members of the Subcommittees:

We are pleased to have the opportunity to provide testimony on behalf of the American Bakers Association (ABA), the national trade organization of the wholesale baking industry, concerning S. 538, the Economic Dislocation and Worker Adjustment Assistance Act. The ABA is composed of more than 200 baker member firms with approximately 1,000 bakery plants, and over 240 allied-member supplier firms.

ABA members include wholesale bakers of bread, rolls, sweet yeast and frozen dough products, cakes and pies. The ABA also includes grocery and chain store bakers, plus manufacturers and suppliers of baking equipment, ingredients, wrapping supplies, transportation and distribution equipment and services to bakeries.

I. INTRODUCTION

The American Bakers Association has long encouraged its members to voluntarily provide employees with as much advance notice of layoffs and plant closings as is possible. Such early notice is helpful in assisting dislocated workers in finding new employment, and mitigating the personal economic pressures which can accompany job loss. In some instances, ABA-member companies have engaged in collective bargaining concerning the closing of facilities or a reduction in the scope of company operations. Severance pay, periods of continued benefits coverage, preferential hiring at nearby plant locations and assistance with job placement have been provided to certain displaced baking industry employees, through voluntary corporate efforts or in compliance with applicable labor agreements and bargaining obligations.

At the same time, the ABA strongly opposes requirements -- such as those contained in S. 538 -- which would mandate notice and "consultation" by Federal statute. The proposed legislation is likely to impede or delay fundamental business decisions to close or reduce employment levels at unprofitable operations. While the measure may be well-intentioned in that it seeks to prevent joblessness, it may well have the opposite result where covered employers are unable to close unprofitable facilities when warranted by business conditions. In such circumstances, the economic vitality of the company's remaining operations is jeopardized, as "subsidies" of unprofitable operations drain the employer's fiscal health.

II. NOTICE AND BARGAINING CONCERNING PLANT CLOSINGS AND LAYOFFS SHOULD BE REJECTED BY CONGRESS

While the ABA and its members can subscribe to the view that policies to aid dislocated workers should be a priority for these Subcommittees and the Congress, we believe that the obligations which would be imposed by Title II of S. 538 -- captioned "Advance Notification and Consultation" -- are essentially punitive in nature and reduce the ability of employers to compete in an increasingly competitive economic environment.

Representatives of companies in the wholesale baking industry oppose, in particular, the prohibition of plant closings and mass layoffs until after an employer: 1) provides written notice of such a proposal, and 2) engages in detailed bargaining over such business decisions with labor unions or specially-elected "employee representatives", as well as representatives of government. The ABA believes that Congressional action to require bargaining over the decision to order sizable layoffs and closings in virtually all instances is inappropriate and undesirable.

These provisions will surely have a substantial, negative effect on corporate investment policies and the expansion of employment opportunities. As can be readily understood, companies contemplating the enlargement of manufacturing capacity to new facilities must carefully weigh the costs and potential profits of such undertakings. This analysis is particularly critical with respect to new plants which are opened to manufacture a new product. If financial penalties are assessed for an employer's failure to provide a closing or layoff notice in accordance with the dictates of a Federal statute, such potential costs must be factored into every company's investment decisions. As a result, employers will be more likely to squeeze expanded production into older plants, and less likely to make investments in new plant locations which will create more jobs.

The proposed measure would also have a negative impact on employment levels at existing facilities which are not currently profitable. By way of illustration, certain ABA-member companies have continued to operate unprofitable plants for a period of months, and even years (in isolated instances). These firms have made the business decision to swallow financial losses running into six or seven figures in the hope that market conditions, production efficiencies or other factors will enable the facility to "turn the corner" in the future. If such companies were required to factor into their economic calculations an "exit tax" which equals six months of additional compensation costs if the facility ultimately falls short, marginal operations will certainly be closed more quickly.

Title II of the proposed measure would effectively reverse decades of interpretations and construction of the National Labor Relations Act (NLRA), 29 U.S.C. § 151, et seq, regarding those actions which are mandatory subjects of bargaining. In its important holding in First National Maintenance Corp. v. NLRB, 452 U.S. 666 (1981), the Supreme Court considered an employer's bargaining obligations over a decision to close part of its business. It held that the harm to an employer's need to operate freely (in deciding whether to shut down part of its business) may outweigh the incremental benefit that might be gained through the union's participation in making the decision. The Court wisely noted that if labor costs are an important factor in a failing operation and a closing decision, the employer will have an incentive to confer voluntarily with the union to seek concessions. However, as the majority opinion authored by Justice Blackmun recognized:

> At other times, management may have great need for speed, flexibility, and secrecy in meeting business opportunitites and exigencies. It may face significant tax or securities consequences that hinge on confidentiality, the timing of a plant closing, or a reorganization of the corporate structure. The publicity incident to the normal process of bargaining may injure the possibility of a successful transition or increase the economic damage to the business. The employer also may have no feasible alternative to the closing, and even good-faith bargaining over it may both be futile and cause the employer additional loss.

452 U.S. at 682-3. The ABA and its members believe that the balance of bargaining rights and obligations under the NLRA concerning closing actions is most appropriate, and should not be disturbed by Congress through the proposed legislation.

Even more dramatic, however, is the fact that the proposed legislation goes well beyond this significant and ill-advised revision of the law of labor-management relations. It would require "bargaining" with worker representatives not certified through the tested processes of the NLRA, and with government representatives over significant business decisions. Such proposals represent a substantial departure from traditional constraints on business planning and corporate decision-making. The ABA and its member companies strenuously object to the institution of notice and mandatory bargaining requirements with such "representatives."

The election of worker representatives under the NLRA has evolved into a rational process through which the rights of workers, unions and employers are balanced and protected. Section 203(c) of the pending measure, however, would establish an "expedited" (but unspecified) method for the designation of worker representatives who may have a substantial impact on the economic viability of the employer. The ABA submits that it is entirely inappropriate to vest "instant employee representatives" with the ability to delay, substantially disrupt or destroy critical corporate economic planning. The actions of such representatives may typically influence the employment security of numerous company workers in locations other than the facility "represented" by these newly-empowered individuals.

Mandatory "consultation" with representatives of local government units also constitutes a drastic and unwelcome interference by public agencies with the operation and business of private enterprise. While such government representatives might commonly seek to fashion compromises which might retain some level of employment, such alternatives are not viable to commercial enterprises in all instances. In those cases in which corporate executives determine that compelling economic conditions mandate the total and immediate shutdown of company operations, they might find their efforts blocked by public officials who seek to postpone the dislocation of their constituents for as long a period as possible (up to six months under Title II). The ABA and its member companies believe that these provisions serve as a penalty on employers who make the hard business decision that they must reduce or eliminate employment in a given area.

We believe that it is also important to note, in this year of the Constitution's bicentennial, that the proposed measure appears to be unconstitutional as well as unwise. The provisions of Title II raise serious questions under the Taking Clause of the Fifth Amendment, notwithstanding recent rulings which have upheld certain Congressional enactments. In

Connolly v. PBGC, ___ U.S. ___, 106 S. Ct. 1018 (1986), the Court emphasized three factors which have particular significance when legislation is weighed against such claims: 1) the economic impact of a regulation on a claimant; 2) the extent to which a regulation has interfered with distinct, investment-backed expectations, and 3) the character of the government action at issue. It is difficult to envision a statutory requirement which runs further afoul of these considerations than Title II of the proposed legislation.

As the preceding comments indicate, the ABA is opposed to any mandatory notice and bargaining requirement. Any time frame selected by Federal legislation would be arbitrary, in that unique circumstances surround each corporate decision to reduce or eliminate employment at a given facility. However, it is clear that the proposed notification and consultation periods outlined in Title II of S. 538 are too lengthy. The extended periods contained in the proposed measure establish excessive financial penalties for circumstances which cannot be anticipated. For example, disruption of company operations might result from the loss of a major customer or supplier, changes in market conditions, consumer preferences, competition or other factors. Many such events come without warning to an employer, and it must not be presumed that all private entities are capable of continuing operations or "carrying" the payroll for six months in the face of such events. While we strenuously oppose the notice and bargaining requirements contained in Title II, we believe that the length of the notification and consultation periods in the bill must be reduced substantially.

The ABA and its member companies also find objectionable the wide range of information which must be disclosed to unions and "employee representatives," as well as public agencies, in the course of mandated consultations. Under the measure, an employer must provide "relevant information" which is "necessary for the thorough evaluation of the proposal to order a plant closing or mass layoff." Thus, not only are employers compelled to bargain concerning the most critical corporate decisions (e.g., whether and under what circumstances to operate a business in a given location), it must provide the most sensitive economic data and respond to alternatives or desired modifications. This provision is obviously susceptible to abuse (through the use of information requests as delaying mechanisms) or misuse (where information provided by an employer surfaces in other contexts).

III. CONCLUSION

The American Bakers Association opposes any provisions of worker dislocation assistance legislation which would impose notice and bargaining requirements concerning layoffs and plant closings. Such requirements would improperly constrain employers, often during periods which are most critical to the survival and profitability of the overall business enterprise. As such, they are likely to prove counterproductive to the goal which the legislation seeks to advance, i.e., enhanced levels of employment and workplace security.

Members of the ABA have never taken lightly the serious step of ordering layoffs or the closing of facilities. Such actions often come at substantial cost to the business enterprise, in terms of capital investment as well as the company's investment in the skills and knowledge of its workforce. At the same time, such actions are sometimes necessary. The American system of free enterprise has reached its level of success through reliance on management judgment concerning decisions which are critical to the well-being of the business enterprise. The ABA submits that placing government officials, "instant employee representatives" and unions in the corporate board room is not the path to industrial resurgence. Accordingly, we strongly urge that such measures be deleted from the proposed bill.

Respectfully submitted,

Paul C. Abenante

Paul C. Abenante
Interim President
American Bakers Association

Charles A Caffrey

Charles A. Caffrey
Stroehmann Bakeries, Inc.
Chairman - ABA Industrial
Relations Committee

OF COUNSEL

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March 19, 1987

The New England Equity Institute
Tom Gallagher, Director
20 East Street
Boston, MA 02111
(617) 350-6152

TESTIMONY OF TOM GALLAGHER IN SUPPORT OF S538

In my six years as a Massachusetts legislator, there was no issue in which I was more deeply involved than that of unannounced business closings.

By 1984, I was able to convince a majority of my colleagues in the Massachusetts House of Representatives to join me as co-sponsors of a bill which would have required companies planning to lay off 50 or more employees to give advance notice of their intention.

The reason for this broad sponsorship lay in the devastating effects of sudden shutdowns and mass layoffs experienced by individual workers, their families, surrounding businesses, and local governments. A large scale layoff always presents serious problems, but one that arrives without notice can be tragic.

Only a reasonable period of notice allows individuals to adjust and perhaps retrain for new employment; community organizations to seek new management or capital in the exceptional case in which a company or plant can be saved; and local communities to assess the impact which the lessening of their tax base will have upon their ability to deliver services.

The advance notice proposal enjoyed widespread support in the Massachusetts Legislature and among the general public. (The Boston Business Journal reported on March 19, 1985 that a survey conducted for Massachusetts corporate clients found that 81% of the general public supported it.) Nonetheless, the proposal was not to become law.

The reason lay in the continued assertion that an advance notice requirement would somehow ruin the state's "business climate" and place the state at a "competitive disadvantage." While I consider this argument to be fallacious,it was undeniably effective.

I believe that it is essential that an advance notice requirement be enacted on the national level where the state to state competition question is moot. Most of America's multi-national corporations already do business in nations with such a requirement - eg. Canada and the European Economic Community - and therefore it will clearly pose no great burden for them to provide the same consideration to American workers as that already required by foreign law.

The job training and demonstration project proposals of S538 are equally important. In the midst of the national debate as to how to keep America "competitive", we should not lose sight of the fact that there is more than one possible strategy of competitiveness.

After all, reducing the wages and expectations of American workers is one possible way to reduce the price of American goods in the interest of keeping them "competitive," - but such a strategy is completely unacceptable.

The only acceptable strategies of economic renewal involve maintenance of the American standard of living. And any such strategy has to cope with the problem of developing a well trained labor force that maintains its position in the world by producing more, not by settling for less.

For too long we have given short shrift to the issues of worker education and job training. We will continue to ignore this vital area at our own peril.

S538 is a bill whose time has come. I hope that in 1987 the United States Congress sees fit to enact it into law.

STATEMENT OF

ASSOCIATED BUILDERS AND CONTRACTORS, INC.

ON S. 538 THE

"ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT"

FOR THE HEARING RECORD OF THE

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY
COMMITTEE ON LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

Associated Builders and Contractors, a nonprofit national association of 19,000 general contractors, subcontractors, suppliers and associated firms appreciates the opportunity to submit for the record our comments on S. 538, the Economic Dislocation and Worker Adjustment Assistance Act.

ABC members believe in the merit shop form of construction in which firms, both open-shop and union, can work together in harmony. ABC fosters a free enterprise climate using the merit shop system in which contracts are awarded on a firm's merit rather than on the basis of labor affiliation. This concept of construction has gained overwhelming acceptance in today's marketplace, with merit shop firms performing more than 70% of our nation's construction.

ABC applauds the efforts of the Senate Labor Committee to address our country's problems with plant closings and mass layoffs and the resulting dislocation of workers. The legislation upon which the Subcommittee on Employment and Productivity is focusing, S. 538, contains three titles: Title I deals with Dislocated Workers' Adjustment Services; Title II addresses Advance Notice and Consultation; and Title III outlines Dislocated Workers' Demonstration Programs.

Our comments focus mainly on Title II of S. 538 dealing with Advance Notice and Consultation and the adverse impact these provisions would have on the business community in general and particularly on the construction industry, which is chiefly composed of small businesses.

First, we would like to assure the Subcommittee that ABC strongly supports Title I of S. 538 which implements the recommendations of Labor Secretary William E. Brock's Task Force on Economic Adjustment and Worker Dislocation. There is a demonstrated need to provide adjustment assistance to dislocated workers to provide for job retraining, job search assistance and income support. The establishment of a Federal Dislocated Worker Unit within the Department of Labor would greatly alleviate the burden that states have in providing necessary and important services to retrain laid off employees and quickly bring them back into the mainstream of America's workforce.

The construction industry knows the value of a trained and skilled workforce. ABC and other construction contractors are facing severe shortages of skilled craft workers. ABC is a leader in providing craft training through its "Wheels of Learning Program" which includes training for apprentice carpenters, electricians, plumbers, masons, sheet metal mechanics, pipefitters, heating, ventilation and air conditioning mechanics, welders and iron workers among other crafts through a competency-based, task-oriented training program. ABC knows that trained craftspeople are crucial to a contractor's economic success. We are also aware that a well-trained workforce is integral to the overall competitiveness and economic well-being of this country. For these reasons, ABC supports the elements contained in Title I -- to provide Federal assistance to the dislocated worker through job training or retraining while providing income support with the goal of future job security and economic independence.

While we recognize and are sympathetic to the disruptive impact that plant closings and mass layoffs have in terms of human and economic costs, ABC does not support the mandatory notice and consultation requirements contained in Title II of S. 538. We do, however, strongly support and encourage voluntary efforts by employers to provide early notice. We believe that the concept of incentives should be developed to promote voluntary prenotification.

The reasons for plant closings and layoffs can be varied; structural changes in the economy, changes in consumer preferences, and loss of financing to name just a few. Within the construction industry, which has a fluid workforce, some unique factors causing "indefinite layoffs" of employees are: weather conditions; environmental delays, bond issues failing in the middle of a project; or the inability of the construction client to make payments.

With an economy as diverse as our country's, we must recognize that an across-the-board solution to problems associated with plant closings and mass layoffs -- such as mandatory advance notice and consultation -- would only create more problems than it would solve.

Malcolm R. Lovell, Jr., chairman of the Department of Labor's Special Task Force on Economic Adjustment and Worker Dislocation acknowledged in his March 6, 1987 statement before your subcommittee that there is an enormous diversity of circumstances leading to plant closings and large-scale layoffs. Mr. Lovell noted that the Task Force agreed that notice is not possible in all situations, however, some Task Force members hold the view that voluntary notification, vigorously promulgated, as opposed to regulations, is the better way to ensure a rapid and tailored response to varying market conditions and employee needs.

In addition, many of the costly constraints placed on businesses by Title II would only serve as a disincentive for creating new employment opportunities. If an employer loses control over when to close his business, it would be less likely that entrepreneurs would set out to open new businesses. This is especially true of small business, which generates a high percentage of new new jobs.

Proponents of S. 538 contend that this legislation would "help workers give the competitive edge back to America." We believe that S. 538 would have directly the opposite effect with the American worker, businessman and taxpayer paying the price for this shortsightedness.

Many of the provisions contained in Title II would be harmful to business in general and totally unworkable for the construction industry in particular. Construction employers are included under the Sec. 201 definition of "employer", and if a contractor employs 50 or more full-time employees, then he is subject to the advance notice and consultation provisions.

The notice and consultation requirements of Title II are triggered by an employment loss at any site. A legal analysis of this requirement suggests that a covered employer could be required to give notice and consult if its actions would cause an employment loss on any site, even if the affected employees were employed by another employer. For instance, a covered general contractors (employer) who intends to terminate a subcontractor (employer/employee) on a construction site would have to give notice and consult if it were possible that the contractor's action would result in termination of 50 or more employees of the terminated subcontractor. The covered subcontractor would also be required to give notice and consult. Theoretically, the same requirements could apply to covered "employer/employee" customers and suppliers seeking to terminate business relations with one another. Where would it stop?

Another area of particular concern to contractors in S. 538 is the definition of "employment loss" in Sec. 201(5) and what it encompasses. Because of the nature of construction work and the use of a transient workforce, there are many layoffs for an indefinite duration -- this is known by both workers and employers in the construction industry. Temporary workers are often hired for only a specific duration. In addition, construction projects can be halted for indefinite periods for a myriad of reasons such as weather conditions, bonding problems or clients not making payments. Under Sec. 201(c) all layoffs of 50 or more employees for an "indefinite duration" require advance notice and consultation. If an employer finds it necessary to layoff 50 or more employees for less than six months, the employer must announce a definite re-employment date or give advance notice and consult. It is not possible to project labor needs that far in advance. If the employer cites a definite recall date within six months and laid off employees are not called back on that date, the employer may be liable for backpay and penalized for fines. Again, labor needs change quickly, and a contractor may not be able to recall all workers laid off. This concept is totally unrealistic for the construction industry where work hours and the number of employees, particularly on large projects, are continually changing.

Sec. 201(4) would also be unworkable for construction. This provision defines "affected employees" as "employees who have been employed by an employer for more than 6 months ..." It is very common in the construction industry, and probably others, for workers be hired and laid off several times within a year as a project progressed and the need for their specific skills ends.

ABC is concerned with the lack of specificity contained in Sec. 203(2) where an employer is required to consult in "good faith" with the representative of affected employees. This provision could be interpreted frequently in a way that an employer could be held liable and face stiff penalties when closings or layoffs are deemed unlawful and the company cannot prove it consulted in "good faith." The term in "good faith" should not be loosely defined in view of the fact that thousands of cases before the National Labor Relations Board center upon the issue of whether employers have bargained in "good faith".

The "good faith" definition used in S. 538 causes confusion because of its vagueness. This lack of specificity will cause enormous compliance uncertainties for employers and generate costly legal burdens for them and in turn, further backlog our courts. This would be an additional cost extending beyond the cost of closing an unsuccessful business not foreseen by the authors of this legislation.

Labor and management coexist within the delicate balance struck by Federal labor law. After taking 11 years to get a plant closing bill to the floor of the House of Representatives in 1985, the legislation failed, creating controversy and deep philosophical divisions. Congress recognized that legislation such as S. 538 causes interference in an issue that is management's right to make. Legislation such as S. 538 would only increase labor-management confrontation, destroying a tenuous atmosphere of cooperation developed over the years.

In summary, ABC believes that dislocated workers should be able to count on assistance and effective retraining to adapt to America's rapidly changing economy. Title I of S. 538 would provide effective relief which ABC supports. However, ABC cannot support any measure which incorporates mandatory prenotification and consultation. Title II of S. 538, the Advance Notice and consultation provisions, would not solve the problems associated with plant closing and mass layoffs -- it would only heighten the negative impact on our nation's economy and overall competitiveness. The provisions of Title II are unrealistic for the construction industry and for we do not support the intervention of government requirements into a private business matter. ABC encourages voluntary advance notification of closings or mass layoffs and would support government incentives to promote voluntary cooperation. It is our belief that good corporate sense and investment in appropriate training programs will do more for the displaced worker than overregulation of an intrinsic private sector matter.

Again, thank you for the opportunity to make ABC's view on S. 538 part of the hearing record.

ASSOCIATION
OF AMERICAN
RAILROADS

William H. Dempsey
President

March 31, 1987

The Honorable Howard Metzenbaum
Chairman, Subcommittee on Labor
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Chairman Metzenbaum:

The Association of American Railroads (AAR) would like the record to reflect its views on S. 538, the Economic Dislocation and Worker Adjustment Assistance Act, on which a joint hearing was held March 26, 1987. The AAR is a trade group representing most of the nation's major freight railroads.

While the AAR applauds the major aim of the legislation, which is to enable displaced workers to receive retraining and to increase their opportunities for reemployment, it is concerned with the new regulatory constraints placed upon plant closings and layoffs in Title II of the bill. The advance notification and consultation requirements, if enacted, will impose upon business in general an unreasonable burden by delaying the implementation of economic decisions and requiring that businesses sustain the economic losses that result from such delay. The railroad industry recognizes the hardship a decision to significantly change operations may cause some employees. But the welfare of all rail employees depends upon the ability of the industry to respond quickly to competitive pressures both in this country and abroad; and that sometimes, unfortunately, means uninhibited plant closings and employee layoffs.

That is not to say that the protection of employees is to be ignored. Indeed, unemployment benefits, severence pay, and supplemental benefits are just some of the buffers which have been erected, with industry assistance, to ameliorate the effects of worker displacement. While all these programs may not be available to every American worker and may not completely compensate employees during their search for new jobs, the AAR cannot see how the advance notification and consultation requirements of S. 538 will put dislocated workers in a much better position. The topics the bill requires to be addressed in consultations with employee representatives will have been exhaustively explored before a decision as drastic as closing a plant, or laying off hundreds of employees, is made. Furthermore, in the three to six month period required for notification and consultation, customers, given such a relatively long warning period, will search for and find new suppliers.

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This will lead to a further draw-down on company revenues which could ultimately have adverse effects on other company operations and, eventually, their workers.

In addition to these general observations, the AAR would like Congress to take notice of the already regulated labor environment in which the railroad industry operates. The Interstate Commerce Commission (ICC), in regulating the rail industry's equivalent of a plant closing—the rail line abandonment--is obligated under 49 U.S.C. § 10903 to protect the interests of employees. This has come to mean that abandonments will be approved by the ICC only if the abandoning railroad agrees to pay labor protection to affected employees which, in the case of abandonments, is the guarantee of wages and benefits for up to six years. In addition, when approving rail mergers and in granting trackage rights applications, the other two situations in which rail employees are most likely to suffer employment losses, the ICC, under the amended Interstate Commerce Act, must impose similar labor protection conditions. It is worth noting that the ICC, while it may chose to deregulate such transactions and changes in operations by virtue of the exemption powers granted by 49 U.S.C. § 10505, must nevertheless continue to impose labor protection conditions because of a Staggers Act amendment to that section.

The rail industry is the only American industry which is mandated by statute to pay labor protection. It is the position of the AAR that such conditions not only adequately provide for displaced workers, but also ensure that railroad companies will abandon rail lines only after much deliberation and consideration. In short, the present regulatory structure accomplishes the goals of the proposed legislation—to soften the effects of plant closings on employees and to ensure that major changes in operations occur only after all alternative avenues have been explored.

S. 538, as presently drafted, will impose the additional burdens of advance notification and consulation onto the present regulated process of rail system restructuring. Given the already generous severance package of wages and benefits accruing to affected rail employees, there is no need to provide for these protections of questionable value but of unquestionable cost. The AAR opposes, in general, the advance notification and consultation requirements contained in Title II of S. 538, but believes they are even less called for in the rail industry. Therefore, a specific provision exempting the rail industry from its reach should be drafted and contained within any final legislation.

Sincerely,

COMMITTEE CORRESPONDENCE

American Iron and Steel Institute
Committee on Industrial Relations

ADDRESS WRITER CARE OF
Armco Inc.
Middletown, Ohio 45043

April 7, 1987

The Honorable Howard Metzenbaum
405 Russell Senate Office
Washington, D. C. 20510

Dear Senator Metzenbaum:

The American Iron and Steel Institute has reviewed S.538 "Economic Dislocation and Worker Adjustment and Assistance Act" and wishes to offer comments on this proposed legislation.

Testimony previously given to the Committee by John S. Irving, Jr. and J. Bruce Johnston on behalf of the National Association of Manufacturers has provided a detailed critique of the proposed legislation. That testimony also provided the Committee members with an overview of the programs in place at USX, which are applicable as well at most of the members of the American Iron and Steel Institute. AISI endorses and supports the testimony given by both of these gentlemen.

With that in mind, this document, presented on behalf of the member companies of the American Iron and Steel Institute, will concentrate on those provisions of the proposed legislation that we find either unworkable on their face or damaging to the welfare of the steel business.

With this proposed legislation, Congress is attempting a top-down fix of a complex problem that varies from industry to industry and company to company within an industry. Larger steel companies already provide notice of shutdowns and layoffs whenever possible. In addition, they are obligated for layoff and shutdown benefits that have driven some companies to seek the protection of the bankruptcy laws in order to reduce or avoid these costs. Smaller companies do not, in many cases, have the wherewithal to comply with this proposed legislation.

Very truly yours,

JHWallace

Chairman Employee Relations Committee
American Iron and Steel Institute

J. H. Wallace
ma

Attachment

American Iron and Steel Institute Comments on S.538 "Economic Dislocation and Worker Adjustment and Assistance Act"

Background

The steel business has historically been subject to the demands of customers and, as a result, has been subject to fluctuating levels of business. This was true even before there was the worldwide overcapacity that exists today. The fluctuating work load and the resulting fluctuating employment levels provided the impetus for development of employee benefit programs that provide for unemployment benefits in the form of money (Supplemental Unemployment Benefits and State Unemployment Compensation) and in the form of protection (life insurance and health care insurance) for varying periods of time for employees on layoff due to lack of work.

In addition, the steel industry has been and is a dynamic industry with constant process improvements being made that result in some employees being permanently displaced as productivity is improved. These types of situations have also been addressed in the employee benefit package in the form of severance pay, early retirement provisions (with supplements until employees are eligible for unreduced social security) and health insurance coverage for retirees.

However, in the past several years, the American steel industry has been experiencing massive financial losses. One of the major causes of this situation is a worldwide overcapacity of steel-producing facilities that is on the order of 250 Million annual metric tons of raw steel. This overcapacity and the resulting financial losses has forced plant closings in the steel industry on a scale that was never anticipated by the original authors of the steel industries' welfare plans.

The key point to remember is that welfare plans that had their origins in a healthy industry have created barriers to plant shutdowns that are presently so onerous that steel companies decide to shut down operations only as a last resort and at great financial penalty. Many companies have found it necessary to seek the protection of the bankruptcy laws to avoid or reduce these costs.

Notification to employees in the case of a permanent shutdown of a plant or a department of a plant is presently done by most steel companies. Such notification is contractually provided for in the situations where the employees are represented by a union and is done as a matter of policy for non-represented employees. Notice is not always easy to provide because, in most instances, the market shuts down steel plants by finding their products wanting in some respect. However, within the limitations of reality, 90 days notice is provided.

Notifications to employees of layoffs is a whole other matter however. Due to the customer-driven nature of the steel business, the companies and the unions representing many of these employees have not been able to devise a sensible method of providing any kind of long-term notice for a temporary lack of work due to a lack of orders. As J. Bruce Johnston pointed out in his testimony, steel companies do not schedule layoffs - rather, they schedule employees to work each week with a posted written schedule that tells the employee what job he is entitled to work and for how many days that week work is available. As short a notice as a weekly schedule is, even that schedule must occasionally be changed due to customer demands or equipment malfunction. With this background in mind, we will comment on the specific provisions of Title II, Advance Notification and Consultation.

Comments on Title II, Advance Notification and Consultation

The bill proposes notification in two situations. First is a plant closing, which we assume to be the permanent shutdown of a plant. Providing a reasonable notice of such an action once the decision has been reached can be and has been done. As pointed out in the background comments, all large steel companies and many smaller companies have contractual requirements to give such notice. However, a sliding scale of notice time, based on the number of employees involved, is not an appropriate method. The company's ability to give notice is a function of the business situation, not the number of employees involved. Markets can disappear with dramatic suddenness. Customers will switch to other suppliers when they suspect an operation is to close down, which hastens the process. The recent collapse of the oilfield equipment industry provides a dramatic example of a vast market collapsing virtually overnight. By the same token, a significant portion of that market should return. When it will return is up to the customer. How does a company provide notice in such situations? Even in situations where we believe we can comply, there is no certainty that we can.

Back pay liabilities, as presented in this law in such situations, are simply punitive - especially to an industry that has the high exit barriers that are common to steel companies. Another layer of expense, which is what the proposed law would impose, will not save jobs or avoid necessary shutdowns. Rather, it will make bankruptcy filings an even more attractive option.

Notification requirements with respect to layoffs as described by this proposed legislation are simply inappropriate. In many cases they would be impossible to comply with except after the fact. As pointed out in the background discussion, employees are scheduled to work on a weekly basis. The fact that 50 or more equivalent employees might not be scheduled for 30 days would probably not be known until the 31st day. When they work, how long they'll work and what job they will work on are decisions originating from the customer. In an industry with the extreme overcapacity that is plaguing the steel industry, the week-to-week level of business is not predictable to the extent this legislation would require. Yet the bill provides for civil actions against any employer who fails to comply with the unknown. The most obvious method to avoid the bill's penalty provisions is to put employees in a state of more or less continuous notice. That action would obviously serve no useful purpose except avoidance of an inappropriate penalty provision. Attached as Appendix A are actual steel plant schedules that illustrate the problem.

Title II also contains notice and information requirements to employees and to various governmental units. The NAM testimony addressed the technical and legal problems with the proposed legislation. They are many and serious. AISI concurs with those comments and, in particular, objects to the concept of legislation that is drafted to prolong a complex process, invites litigation and probably cannot be complied with in practice. Once customers are notified of a supplier's intent to shut down, they immediately begin to arrange for other sources of supply. The time to shut down an operation is normally utilized in finishing the processing of orders already on the books. When they are done, they are done. Legislation will not keep an operation running that has no business coming in.

The thrust of these provisions will be to prolong the process, not avoid it. Keep in mind that in the steel business, exit costs are already extreme. A company elects permanent shutdown because they have no alternative. No useful purpose will be served with the addition of more expense to the already expensive process.

Appendix A

Number Of Layoffs Among 17 Companies Responding To Survey

No. of Employees	1985	1986
0 - 99	115	118
100 - 499	63	53
500 or More	7	6

In the two-year period, these plants would have been required to make 185 notifications in 1985 and 177 notifications in 1986, based on after-the-fact analysis.

Before-the-fact, it's likely that significantly more notifications would have been made because of the penalties associated with failure to report under S.538.

NaCOR

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O. FRITZ WENZLER
Vice President/Labor Relations
Johnson and Johnson

VERLE G. WHITTINGTON
Vice President/Employee Relations
Shell Oil Company

March 23, 1987

Mr. Jim Brudney
428 Dirkson Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Brudney:

At Senator Metzenbaum's suggestion in his letter dated 3/4/87, I have attached two copies of NaCOR's testimony regarding S. 538, the Economic Dislocation Worker Adjustment Assistance Act of 1987. The Senator indicated the hearing record would remain open for two weeks following hearings to allow NaCOR to submit written testimony. The two week period expires 3/24/87 and we would therefore appreciate the attached testimony of Douglas H. Soutar, Chairman of the NaCOR Board, being placed in the Congressional Record.

I have also attached a copy of NaCOR's most recent study entitled Business Closings and Worker Readjustment: The Canadian Approach. This study was prepared for NaCOR as a result of increasing attention being given to the Canadian Industrial Adjustment Service to serve as a role model for implementation in the U.S. This study also served as a portion of Mr. Soutar's testimony before the House Subcommittee's on Labor Management Relations and Equal Opportunities on 3/17 re H.R. 1122. We would appreciate it if the study could be included in the Record for S. 538 as well.

If you have any questions concerning this request, please don't hesitate to call. Thank you.

Sincerely yours,
Gretchen E. Erhardt
Gretchen E. Erhardt
Director

GEE:oli
attachments

National Center On Occupational Readjustment, Inc.
1331 PENNSYLVANIA AVE., N.W. • SUITE 1500 NORTH • WASHINGTON, D.C. 20004 • (202) 637-3039

TESTIMONY OF DOUGLAS H. SOUTAR

CHAIRMAN OF THE BOARD OF TRUSTEES OF THE

NATIONAL CENTER ON OCCUPATIONAL READJUSTMENT, INC.

BEFORE THE JOINT SUBCOMMITTEES OF

LABOR MANAGEMENT RELATIONS AND EMPLOYMENT OPPORTUNITIES

OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR

ON H.R. 1122 - THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

MARCH 17, 1987

I am Douglas H. Soutar, Chairman of the Board of Trustees for the National Center on Occupational Readjustment (NaCOR). I am a former Senior Vice President of Industrial Relations with ASARCO, Inc., from which I retired in 1985. I have had a good deal of personal experience on the subject of today's hearings. Mr. John C. Read of Cummins Engine Co. testified on behalf of NaCOR in March of 1985 when these same subcommittees were considering H.R. 1616, The Advance Notification and Consultation Act of 1985. The focus of my testimony is the business community's concern about worker readjustment and its commitment to that concern by organizing and supporting NaCOR.

INTRODUCTION

Let me first present some background on what NaCOR is and why it was formed. NaCOR is a 501(c)(3) educational foundation based in Washington, D.C. and now funded solely by the business community. The Center was established in 1983 by concerned leaders of the private employer community. A principle factor leading to NaCOR's creation was the dearth of information available to employers, particularly medium and small businesses, to guide them in managing the many issues that arise in major work force dislocations.

A second principle factor in NaCOR's creation was a strongly held belief among business leaders that government-mandated solutions to employee adjustment problems would not be workable, and that business had an obligation to take the responsibility to advance effective voluntary initiatives.

Thus, NaCOR was formed to promote greater awareness and use of successful programs that employers have been using to assist displaced workers. Because the Center was formed by business and is supported by business, it has access to considerable expertise in voluntary programs and policies that have helped dislocated workers. The organization serves as a clearinghouse and resource center where employers can turn for assistance when faced with a plant closing or significant reduction in force. Until the formation of NaCOR, there was neither a single source nor a formal mechanism through which companies faced with worker dislocations could gain access to this expertise.

Recognizing the vital role industry must play in effectively managing economic change, the U.S. Department of Labor provided NaCOR with start-up funding by way of a one-time 18-month demonstration grant. The grant, which expired in April 1985, was a partnership endeavor between the government and business to demonstrate industry's commitment to managing business closings. The underlying premise of the grant was that business closings were unique events that required a variety of responses to assist affected workers. The goal was to identify and communicate the most effective of these responses to companies who could use them.

Under the terms of the grant, NaCOR was to collect and disseminate information on sound, practical methods that have been developed voluntarily by business to mitigate the effects of plant shutdowns. NaCOR conducted original case studies, made site visits, consulted with practitioners from federal, state and local governments and developed a library of materials regarding all aspects of worker dislocation.

As already mentioned, the business community has continued to demonstrate its commitment to NaCOR's important goals by funding the Center with company contributions upon expiration of the Department of Labor grant.

ONGOING BUSINESS SUPPORT

NaCOR is now solely funded by over 75 companies and private foundations. In fact, we are approaching our third year of self-sustaining operations. This alone pointedly illustrates that business *is* concerned about the problem of worker adjustment and is actively doing something about it. The problems of business closings are neither new nor can they reasonably be expected to vanish given the dynamic economy. The Task Force on Economic Adjustment and Worker Dislocation, established by Secretary of Labor Brock in November 1985, reports that "some business closings and permanent layoffs are inevitable and can be a concomitant part of achieving and maintaining a competitive, healthy economy and a strong position in the international marketplace."

COMPREHENSIVE GUIDANCE

Utilizing its information base, in 1984 NaCOR published *Managing Plant Closings and Occupational Readjustment: An Employer's Guidebook*. The *Guidebook* represents 238-pages of 'never-made-available-before' information. It is a thorough and easily readable examination of successful planning and program options available to managers facing a work force reduction of business closing. *Managing Plant Closings and Occupational Readjustment: An Employer's Guidebook* is comprehensive, perhaps to the point of providing more information than an employer may ever need. This is because NaCOR recognizes that each plant closing is unique, with its own set of contributing factors. Our experience shows that there can be no single "best" approach that can be applied in individual closing situations. Rather, the *Guidebook* presents a range of options to help the user reach decisions that will be in the best interest of all parties involved. For example, the *Guidebook* contains:

- case studies of successful employee readjustment services;
- a catalogue of available federal, state and local assistance programs;
- legal requirements that must be observed;
- internal organizational arrangements designed to facilitate worker assistance initiatives;
- appendices of sample worker assessment questionnaires and communication techniques.

More than 2,000 Guidebooks have been sold or distributed to interested companies (both domestically and abroad), state Governor's offices and Private Industry Councils, state and local governments, academicians, and business associations. We believe that distribution and use of the practical information contained in the Guidebook has helped to mitigate the potentially adverse consequences of many work force dislocations. At the same time, NaCOR recognizes that there is more to be done in communicating this important message.

NACOR SERVICES

NaCOR has developed a variety of services available to companies and other interested parties seeking workable solutions to business closings. For example, the Center maintains a roster of qualified industrial relations retirees who are available to assist managers on-site. NaCOR staff also provides guidance and pertinent information when appropriate.

Thus, NaCOR assistance was enlisted by the Electrolux Corp. -- maker of vacuum cleaners -- before and during the 1985 closing of its Greenwich, Connecticut facility. This closure affected approximately 800 blue-collar workers whose local employment base had been transformed into a predominantly managerial, white-collar work force. Utilizing NaCOR's services as well as assistance provided by the Department of Labor, Electrolux was able to successfully place over 80% of its total work force. Attached is a letter of appreciation from the Chairman and Chief Executive Officer of Electrolux regarding NaCOR's role in this successful worker adjustment effort.

NaCOR staff was also called upon by the BFGoodrich Tire Group to provide technical assistance during their 1986 Miami, Oklahoma closure. A little knowledge coupled with some bureaucratic legwork enabled the company to obtain financial resources for employee outplacement efforts. And although the placement rate was not as good as in the Electrolux case -- primarily a result of high regional unemployment -- Goodrich employees, through the company's efforts, were given maximum assistance in seeking reemployment.

NaCOR's research facilities were also accessed by other research organizations. Examples include:

- NaCOR assisted the Conference Board in preparation of its survey used to determine the impact of company programs in plant closing situations;
- NaCOR was consulted by the General Accounting Office regarding its questionnaire to survey employers on plant closings;
- NaCOR critiqued a compendium of employer practices compiled by the Ohio State University's National Center for Research in Vocational Education;
- NaCOR reviewed and commented on the Office of Technology Assessment's report on early notification and worker readjustment programs.

NaCOR also assisted in the development of voluntary guidelines for employers in the states of Maryland, Pennsylvania, Washington and Connecticut. These guidelines have been distributed by state manufacturing associations and chambers of commerce. In addition, NaCOR maintains ongoing communications with various state legislatures regarding the variety and status of legislative efforts to assist dislocated workers.

These are just some examples of NaCOR's commitment to work with and communicate positive worker adjustment programs. These voluntary employer initiatives are good examples of the dedication many companies and employer groups have to construct thoughtful and effective plant closing programs.

Secretary of Labor Brock's Task Force on Economic Adjustment and Worker Dislocation strongly recommended in their Final Report that "Guidelines which generally describe responsible private sector behavior on a business closing or permanent mass layoff should be more widely communicated to employers." Through the Guidebook and its other services, NaCOR seeks to do just that.

OTHER RESEARCH AND INFORMATION

NaCOR recognizes that business closings, as unfortunate as they are for those who lose their jobs, are nevertheless an inevitable part of our economic system. Business closings occur for a variety of important but frequently misunderstood reasons. In 1986 NaCOR published Why Plants Close: Growth Through Economic Transition. This pamphlet briefly summarizes some of the more common reasons for business closings and, additionally, highlights why closings must be considered unique events. The pamphlet also points out the critical fact that the U.S. creates far more jobs than it has lost. According to recent Bureau of Labor Statistics data, on average the nation created approximately 2 million jobs per year since 1976. In other words, despite plant closings, for the past 5 years or more, the U.S. created twice those lost. In contrast, the nations of Western Europe -- where legal barriers severely restrict the ability of businesses to close or relocate facilities -- experienced a net decrease of 840,000 jobs between 1973 and 1983.

RECENT NACOR RESEARCH

Responding to the general lack of comprehensive data regarding employer requirements in the nations of Western Europe in plant closing situations, NaCOR published in 1986 Regulating Plant Closings and Mass Layoffs: A Summary of Foreign Requirements. The 130-page book outlines collective dismissal and individual termination regulations currently enforced in European Community member states as well as Sweden and Japan.

A little more than a year ago, the Department of Labor, in cooperation with the National Governor's Association announced a pilot project to test the concept of the Canadian Industrial Adjustment Service (IAS) in six states. At the same time, NaCOR commissioned the preparation of an objective critique of the Canadian IAS. A copy of the NaCOR study, entitled Business Closings and Worker Redjustment. The Canadian Approach is attached for your information.

Briefly, the Canadian Industrial Adjustment Service is a federal program with offices located throughout the provinces. Established in 1963 as the Manpower Consultative Service, the IAS attempts to ensure the rapid delivery of federal, state and local assistance to business concerns experiencing economic difficulties.

Business Closings and Worker Readjustment: The Canadian Approach is divided into four sections. In capsule they include:

- a review of Canadian federal and provincial legislation;
- a review of some of the legal issues which have arisen under Canadian plant closing laws;
- a summary of the Industrial Adjustment Service;
- results of an employer opinion survey conducted by the study authors.

Overall, the functioning of the IAS received a favorable response by the surveyed employers who had used it. However, the authors conclude that the IAS probably does not effectively serve small employers or unorganized workforces, simply because they do not use the IAS. Results of the employer survey indicate that if cooperation with the IAS were made mandatory, employers would be far less inclined to view it favorably. Interestingly, it appears it is the voluntary nature of the program that serves as a catalyst for its effectiveness.

PROPOSED NACOR RESEARCH

As mentioned earlier in my testimony, one of the principle factors in NaCOR's creation was the need to get information concerning effective worker adjustment methods to medium and small businesses. Despite our efforts to date, everyone will agree that more can be done to communicate this important message to these employers.

Accordingly, NaCOR hopes to conduct a survey in the near future that will be directed to these very employers. The basic thrust of the survey will be to determine to what extent medium and smaller businesses are aware of existing worker adjustment programs, both in the private and in the public sectors. The survey results, once analyzed, will hopefully provide constructive guidance on how communication methods can be improved so that smaller businesses can access effective worker adjustment programs.

CONCLUSION

The decision to close a facility and the manner in which that objective is to be accomplished are highly sensitive matters. Accordingly, employers are generally hesitant to solicit in advance the advice and counsel of government agencies and other outside organizations.

NaCOR, in contrast, is an organization directed by a Board of Trustees of 22 companies and trade associations and provides the kind of atmosphere necessary for a free flow of information. A list of the NaCOR Board of Trustees is attached for your information.

NaCOR's activity is an expression of the business community's concern for the problem of workers caught in declining industries and is an effort to do something about it. Our studies and publications illustrate the positive steps that employers can and are taking to address this problem, and encourage others to follow their lead. We hope this committee will support our efforts and recognize the distinct advantage of a voluntary, rather than mandated approach.

ELECTROLUX

[illegible]
[illegible]
[illegible]

July 26, 1984

Mr. Douglas Soutar, Chairman
NACOR
1776 "F" Street, N.W.
Washington, D.C. 20006

Dear Mr. Soutar:

Many thanks for all the help and guidance you and your staff have provided to us during our Old Greenwich Plant Closing this year. The input from NACOR has been important to us in developing the best possible reemployment program for our employees.

Your guidebook provided effective advice in planning, organizing and implementing the closure. We are proud to note that the program Electrolux developed has been highly praised on the Federal, State and Local level. Your contribution helped make that recognition possible.

Once again, we very much appreciate all of your efforts on behalf of our employees.

Yours very truly,

C. Steven McMillan

NaCOR

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and
WORKER READJUSTMENT

*****

The Canadian Approach

David G. Newman, Esq.
William Gardner, Esq.

The National Center on Occupational Readjustment, Inc.
1987

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INTRODUCTION

Preface

Last March, the Board of Trustees of the National Center on Occupational Readjustment (NaCOR) approved a proposed research project designed to analyze the experience of Canada in dealing with business closings and mass layoffs. The project was given the go ahead primarily because of the increased attention that U.S. policy makers have been giving to worker adjustment initiatives taken by the federal and provincial governments of our neighbor to the north. There was also a concern that much of the existing literature concerning the Canadian experience was self-serving, that is prepared by Canadian government officials, or was anecdotal rather than comprehensive.

Several recent developments in the U.S. bear out the NaCOR Board's good judgment that a comprehensive summary of the Canadian experience was needed. For example, in March 1986 the U.S. Department of Labor, in conjunction with the National Governor's Association, launched a one-year demonstration project to establish a Canadian-style industrial adjustment service in six states. (A description of the Canadian program is provided in Section III of this report.) It is interesting to note that while only six states were chosen to participate in the demonstration project, 35 Governors expressed an interest to the Secretary of Labor. The preliminary results of the project are due to be released January 1988.

In another recent development, the Secretary of Labor's "Task Force on Economic Adjustment and Worker Dislocation" released its final report this January. The Task Force had been created by Labor Secretary Brock in October 1985 to prepare a comprehensive report on the issue of worker dislocation and to come up with recommendations for solutions to the problem. The Task Force Report observed that "the quick response capability of the 25-year-old Canadian Industrial Adjustment Service (IAS) appeared to offer the highest degree of replicability for the United States."

Finally, the 100th Congress has already started considering major legislative proposals designed to address the issue of worker adjustment. For example, Representative Jim Jeffords, the ranking minority member on the House Education and Labor Committee, has introduced a bill (H.R. 728) to implement a worker readjustment service modeled after the Canadian IAS. Other similar proposals are expected to be introduced. All of the developments just discussed make publication of Business Closings and Worker Readjustment: The Canadian Approach at this time particularly appropriate.

In approving the project, the NaCOR Board believed that if government officials in the U.S. were going to seriously consider Canada as a possible model for domestic responses to worker adjustment problems, it would be useful to the debate to provide a detailed and, hopefully, objective summary of Canadian government efforts with respect to these issues. The Board believed this could best be accomplished by having the study prepared by someone directly familiar with Canada's experience who was not a member of the government.

This study was prepared by David G. Newman, Esq., a partner with the firm of Pitblado and Hoskin in Winnipeg, Manitoba. Mr. Newman was assisted in its preparation by William S. Gardner, Esq. The opinions and conclusions expressed are those of the authors' and are neither specifically endorsed nor rejected by NaCOR. Nevertheless, NaCOR believes that the study has accomplished its purpose in that it provides a good overview of how Canada has responded to the issue of worker adjustment, from a Canadian perspective.

The study is organized into four major sections.

Section I provides a description of plant closing legislation in Canada, including a description of both federal and provincial requirements that are currently in effect. The section also briefly explains the federal/provincial government relationship, which is quite different than the federal/state government relationship in the U.S.

Section II summarizes legal issues which have arisen under Canadian plant closing legislation, and how the Canadian courts have resolved these issues to date. These issues include distinguishing between layoff and termination, the definition of establishment and calculating the number of employees needed to trigger advance notice requirements. The cases discussed suggest that issues relating to worker adjustment have proven to be exceedingly complex.

Section III describes the Canadian Industrial Adjustment Service, formerly known as the Manpower Consultative Service. The IAS program, which is largely voluntary, is available to assist employers in their efforts to find new work for employees who have been dislocated due to plant closings or permanent layoffs. The authors conclude that it has been used most frequently in a large employer, unionized setting. The IAS is the Canadian program most often cited as a possible model for duplication in the U.S.

Section IV surveys employer opinion concerning the business community's experience with the IAS, based largely on responses given to a survey which was sent by the authors to companies that had actually used the IAS. Interestingly, while giving the service high marks for acceptance, the surveyed employers were less persuaded that it was actually effective in meeting its intended purpose. The survey results are clearly useful in assessing how employers have rated the effectiveness of the IAS from a real world perspective.

The study also includes several informative Appendices, including a comparative chart of plant closing legislation in various Canadian jurisdictions and a directory of national and regional offices of the IAS.

Questions or comments regarding the study should be directed to the National Center on Occupational Readjustment, 1331 Pennsylvania Avenue, NW, Suite 1500, North Office Lobby, Washington, DC 20004-1703.

Gretchen E. Erhardt
Director
NaCOR

I. DEVELOPMENT OF PLANT CLOSING LEGISLATION IN CANADA 1/

A. History

The first legislation affecting group terminations was enacted in the province of Ontario in 1970 in conjunction with major amendments to its Employment Standards Act. The new provisions included the requirement to give periods of notice depending upon length of service in cases of individual terminations. In the case of termination of employment of 50 or more persons in any period of four weeks or less, notice periods were required on an ascending scale depending on the number of employees involved. Employers with fewer than 50 employees were not covered.

The Ontario legislation also introduced for the first time the requirement that covered employers must notify and cooperate with the Provincial Minister of Labour in connection with any action or program intended to adjust the employees who were displaced.

The legislation was motivated largely by a concern as to the capacity of the economy to accommodate a large number of employees reentering the job market at one time. A further concern was the fact that once their employment was terminated, employees tended to disperse, making it more difficult to assist them in a coordinated fashion. Finally, policy makers believed that by requiring employers to give advance notice, or pay in lieu thereof, the periods during which employees were in receipt of social assistance, such as unemployment insurance or welfare, would be reduced. Thus, the theory went, government and society would save money.

The federal government followed close upon the heels of the Ontario legislature with amendments to the Canada Labour Code in 1971. The federal provisions were very similar to the Ontario model.

Similar legislation was enacted in the province of Manitoba in 1972. During the debates respecting the Manitoba bills some sentiments were expressed which presaged the continuing impetus for legislation in that province to further restrict the right of a company's management to manage the size and composition of its work force. For example, a member of the majority party stated the following in support of the measure:

> "And I don't think [we] would want to say that this legislation expresses the belief of this government that it recognizes that it is management that has the right to layoff employees at will, but rather this could be a matter of...saying we want more time notification but we won't allow layoffs, or we want to have proof that layoffs are required by opening the books, or some other provision which would take away the kind of dictatorship on the part of management who would have the right on its own without any provision of proof to the labour force that such layoff is necessary without having to refer to any other authority, any other body, including its labour force, (management) has the right to cast aside at will."

The lead taken by the provinces of Ontario and Manitoba and the federal government was followed over the ensuing years by other regions. Currently group termination provisions exist in six provincial jurisdictions and the Yukon Territory as well as the federal standards. (See Appendix I for a reference chart of plant closing legislation across Canada.)

B. Federal/Provincial Regulation

Before discussing the specific provisions of the group termination provisions of the federal Canada Labour Code and those of the provinces where such requirements exist, it is important to provide some explanation as to the relationship between the federal and provincial governments.

Federal requirements apply directly only to a small percentage of Canadian employers, primarily those businesses which contract directly with the Canadian government, and certain industries which are specifically subject to federal jurisdiction, such as banking, transportation and shipping. As a practical matter, only about five percent of Canadian employers are covered by federal requirements. All other employers are directly subject to provincial jurisdiction.

The federal protections thus tend to serve as minimum standards to serve workers who would not otherwise be protected by provincial legislation.

C. Federal Legislation

The current provisions contained in the Canada Labour Code respecting group termination of employment are more comprehensive than any jurisdiction in Canada. The Code provides that where 50 or more employees in an industrial establishment are terminated within a period of four weeks or less the employer must give notice of at least 16 weeks prior to the effective date of the termination. There is no ascending scale as is common in most other jurisdictions. Under certain circumstances as prescribed in the implementing regulations, the 16 weeks notice provision may be triggered by the termination of a lesser number than 50 employees.

Notice must also be given to the federal Minister of Employment and Immigration, the Canada Employment and Immigration Commission, representatives of the employees, if any, and the employees. The notice must contain information as to the planned termination date of the employees or, in the case of a staggered termination, the planned dates for each individual, the estimated number of employees in each occupational classification whose employment is to be terminated and other information as may be prescribed in the regulations.

The employer is required to cooperate with the Canada Employment and Immigration Commission by giving any information requested by the Commission for the purpose of assisting displaced employees. In addition, the employer must give the employees a statement setting out the vacation benefits, wages, severance pay and any other benefits and pay to which they are entitled arising from the employment or termination of that employment.

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The employer is also required to participate in the establishment of a "Joint Planning Committee" and cooperate with the committee in its efforts to adjust employees. A Joint Planning Committee is comprised of equal representatives of business, labor and public agencies.

A unique aspect of the federal Code is a provision for arbitration of disputes arising out of the operation of the Joint Planning Committee. The Code stipulates that upon the unanimous application of the committee members representing one or the other party the Federal Labour Minister may appoint an arbitrator to assist in developing an adjustment program and resolving matters in dispute respecting it. A statement of the matters in dispute is prepared by the Minister and sent to the arbitrator and to members of the Joint Planning Committee. The issues contained in the statement are expressly restricted to those matters which might normally be the subject of collective agreement negotiations in connection with termination of employment. The arbitrator is excluded expressly from reviewing the decision by the employer to terminate or from delaying the date of termination assuming it is otherwise in accordance with the provisions of the Code. To date, there have only been four references to arbitration pursuant to this section.

In addition to the requirement to give notice under the group termination provisions, an employer is also required to give severance pay to employees who have been employed continuously for at least 12 months, amounting to the greater of two days' wages per year of employment or five days' wages.

An employer is exempt from the group termination requirements with respect to the termination of seasonal and casual employees. Employers may also be exempted by the Governor General-In-Council (the executive branch) or by the Labour Minister, either of whom may waive the notice provisions if it is established they are prejudicial to the interests of the employer or the employees. The Labour Minister may grant pay in lieu of notice upon petition by the employer.

If employees are represented by a union, the parties may expressly contract out of the group notice provisions if the collective bargaining agreement contains terms which specify procedures by which matters relating to the termination of employees may be negotiated and settled. Terminations as a result of technological change may also be exempted from the group notice provisions.

D. Provincial Legislation

Before discussing the individual provincial requirements regarding group terminations, it is important to note that pay in lieu of notice may be granted by the provincial Labour Minister. All of the following provincial regulations, except Quebec and the Yukon Territory, include an entitlement allowing the employer to petition the Minister for pay in lieu of notice.

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Ontario. The group termination provisions contained in the Employment Standards Act of Ontario are very similar to those originally enacted in 1970. An employer who terminates the employment of 50 or more employees within a four-week period is obliged to give eight weeks notice for a termination of between 50 and 199 employees, 12 weeks for 200 to 499 employees, and 16 weeks if 500 or more employees are dismissed.

A layoff is not considered to be a termination if it is "temporary," that is for a duration of not more than 13 weeks within a period of 20 consecutive weeks. An otherwise covered layoff may be for a longer duration if the employee continues to receive severance pay from the employer or the employer makes contributions to a pension, insurance or supplementary unemployment plan in favor of the employee.

The employer is required to cooperate with the provincial Labour Minister in connection with efforts to establish the employees in other employment by participating in actions or measures as directed by the Minister, by joining with the government in establishing and operating a "Joint Planning Committee," and by contributing to the reasonable cost or expense of such a committee. Notwithstanding this requirement, which is similar to the provision contained in the federal Code, the Minister of Labour in Ontario has never exercised his discretion to require employers to participate in the work of a Joint Planning Committee.

Although the group notice periods contained in The Employment Standards Act are not cumulative, it provides for severance pay triggered by the termination in a particular establishment of 50 or more employees within a period of six months. The requirement to give severance pay is in addition to the requirement to give notice and applies notwithstanding the possibility that many employees may find other jobs almost immediately.

Exceptions to the notice provisions include an employee who is employed for a definite term or task, is temporarily laid off as defined in the implementing regulations or who has been guilty of willful misconduct or neglect of duty. Circumstances involving "unforeseen frustration of contract" are exempt unless the circumstances involve an order under the provincial Environmental Protection Act. Finally, an entire industry can be specifically exempted by the regulations. For example, employers engaged in ship building have been exempted. The regulations also exclude situations where the layoff or termination is a result of a strike or lock-out at the place of employment and where an employee refuses an offer by his employer of reasonable alternative employment. Casual employees and employees engaged in the construction industry are also not entitled to the beneifts of the notice provisions.

Severance pay is not applicable if the employee receives supplemental unemployment benefits or if a collective bargaining agreement provides severance pay based on length of service. In addition, employees are not eligible for severance pay if employed less than five years. By inference, severance pay provisions provided contractually may prevail even if they are not as generous as the Employment Standards Act. An employee who is entitled to receive severance pay and who also holds recall rights must elect one or the other. If he elects severance pay, any rights to recall are extinguished. If he elects to maintain recall rights or makes no election, severance pay is sent in trust to the provincial Director of Employment Standards. The severance pay provisions do not apply to employees who refuse an offer of reasonable alternative employment with the employer or who, upon termination, are "retired" and receive an actuarially unreduced pension benefit. Casual and construction employees are also excluded from the application of the severance pay provisions.

A further exception, which is unique, provides that the group termination provisions do not apply where the termination of 50 or more employees does not constitute more than 10 percent of the work force, unless the termination is caused by the permanent discontinuance of all or part of the business of the employer at the establishment. Employees with less than three months service are not covered.

The Act also confers jurisdiction upon a Refereee to determine that "an act, agreement, arrangement or scheme is intended to have or has the effect, directly or indirectly, of defeating the true and intent purpose of this Act and the regulations." This jurisdiction may be exercised in determining questions regarding the applicability of group notice provisions or an employer's liability to pay severance pay notwithstanding that the termination technically does not trigger either provision. If the Referee makes a positive determination he is authorized to "direct an order requiring such person to cease and desist...and order what action...shall (be taken) or (refrained from) in order to comply with (the Act)."

Manitoba. In Manitoba, if an employer terminates the employment of a minimum of 50 or more employees in a particular industrial establishment within a period of four weeks, the requirements for notice are: 10 weeks in the event of termination of 50 to 100 employees; 14 weeks for 101 to 299 employees; 18 weeks if 300 or more employees are dismissed. A layoff is not considered a termination if it is in accordance with custom or practice in a seasonal industry or the term is eight weeks or less in a period of 16 consecutive weeks. An otherwise covered layoff may be longer if the employee continues to receive wages or payments from the employer or the employer continues to make payments for the benefit of the employee to a pension plan or group insurance plan.

The information to be contained in the notice is similar to the federal requirement with two conspicuous additions. The employer is required to give the reasons for termination and to give the names of two persons to act as the employer's representatives on a Joint Planning Committee, which must be established if directed by the provincial Labour Minister.

The employer is required to cooperate with the provincial Minister of Labour in any action or program aimed at facilitating the reemployment of the displaced employees. This includes participating on a Joint Planning Committee if required to do so by the Labour Minister. Employee representatives are appointed by the bargaining agent if applicable. If not, they are chosen by election of the employees, with the assistance of the employer. The stated purpose of such assistance is to facilitate "the election of persons to represent the views of the affected employees." There is provision for cochairpersons representing each party.

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The law mandated the Joint Planning Committee first to develop an adjustment program designed to eliminate the necessity for termination or failing that, to minimize the impact of such termination upon the affected employees. In an apparently direct reference to the provisions contained in the federal legislation dealing with the same subject, the Joint Planning Committee is expressly authorized to deal with all matters relevant to its object and mandate and is expressly not limited to dealing only with such matters as are normally the subject matter of collective bargaining in relation to termination of employment.

The Manitoba exceptions include employment for a definite term or task, layoff as opposed to termination, willful misconduct or neglect of duty and frustration or refusal of a reasonable employment offer. Casual employees, those engaged in a strike or lockout or employed in the construction industry are also not entitled to notice. An individual who, upon termination, is "retired" may not be entitled to the benefits of notice. If the employer establishes that the employee has reached the age of retirement according to established practice, then the employer is no longer obligated under the law except insofar as it is otherwise liable to the employee under applicable pension provisions.

Quebec. In Quebec, an employer is obliged to give: two months notice where the employment of between 10 and 99 employees is terminated; three months where 100 to 299 employees are terminated; and four months in the case of termination of 300 or more employees. Unlike most other Canadian jurisdictions, there is no equivalent to the usual four week period within which the terminations must be effected in order to trigger the provisions. There is a mandatory stipulation for establishment of a Joint Planning Committee with financial support from the employer.

Notice provisions do not apply where employees are assigned work of a seasonal or intermittent nature or are dismissed indefintely for a period of less than six months, or are engaged in a strike or lockout. A unique provision stipulates that if an employer is unable to give the required notice due to an unforeseeable event and the employer further establishes that he was unable to foresee a collective dismissal, the provincial Labour Minister may only require the employer to give notice "as soon as possible."

Nova Scotia. Nova Scotia requires: eight weeks notice in case of termination of employment within an establishment of between 10 and 99 employees; 12 weeks for 100 to 299 terminations; 16 weeks in the event of the termination of employment of 300 or more employees. A layoff is not a dismissal if it is for six days or less. The notice must be given to the employees affected and to the provincial Labour Minister. There is no requirement for participation in the establishment and function of a Joint Planning Committee.

The notice provisions are not applicable to a person who is employed for a definite term or task, is terminated for a reason beyond the control of the employer, has refused reasonable alternative employment, is engaged in the construction industry or is employed in an occupation exempted by regulation.

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Newfoundland. In Newfoundland, an employer who terminates the employment of 50 or more employees within a four week period is required to give: eight weeks notice where the number of employees is less than 200; 12 weeks notice for 200 to 499 employees; and 16 weeks notice where 500 or more are dismissed. A layoff is not a termination if it is of one week or less duration. Payment in lieu of notice includes regular wages and customary or regular overtime. Notice is required to be given to the employees and to the provincial Labour Minister and the information contained in the notice must include the reason for the terminations. Newfoundland law contains most of the exemptions also contained in the other provincial statutes.

New Brunswick. New Brunswick requires four weeks notice of termination in the event more than 25 employees (or at least 25% of the work force) are terminated within a four week period. Interestingly, the provisions are only effective if the employees are covered by a collective bargaining agreement. Notice must be given to the employees affected, the provincial Labour Minister and the bargaining agent.

The notice requirements do not apply where the layoff results due to an unforeseen lack of work or otherwise does not exceed six days. Employment for a definite term or task or in construction of seasonal occupations, does not qualify. Employees who are retired pursuant to a bona fide retirement plan are not entitled to notice.

Yukon. In the Yukon Territory, notice of group terminations is required where an employer terminates 25 employees or more within a four week period. In the case of terminations numbering between 25 and 49 employees, the notice required is five weeks. Where 50 to 99 employees are terminated, nine weeks notice is required. For 100 to 299 employees terminated, 13 weeks notice is to be given and 17 weeks notice is required in the cases of 300 or more employees. Identical notice is required in the event of temporary layoff.

The notice provisions do not apply to seasonal or construction industry employment. Further exceptions include termination due to frustration, refusal of alternate employment, or discharge for cause. If temporary layoff does not exceed the period prescribed in the regulations, notice need not be given.

Other Provinces and Territories. British Columbia, Alberta, Saskatchewan, Prince Edward Island and the Northwest Territories do not presently have group termination laws. Government officials from Alberta and Saskatchewan have commented that, in their opinion, there does not seem to be such need, or demand, for such provisions.

II. LEGAL ISSUES

A. Introduction

Since enactment of group termination legislation in various Canadian jurisdictions, several significant legal issues have arisen which have been addressed by the courts. The following is a summary of some of the more important interpretations which have developed out of these court cases. Most of the decisions discussed involve the Ontario Employment

Standards Act, which as mentioned earlier is the first of the provincial group termination laws enacted. Precedents established by the Ontario courts will likely be given serious consideration as similar issues are litigated in other jurisdictions.

B. Lay-Off versus Termination

Whether a lay-off constitutes a termination as contemplated in the group notice provisions has occupied the attention of tribunals and the courts in several jurisdictions on a number of occasions.

For example, in Falconbridge Nickel Mines v. Simmons and United Steel Workers of America and Sudbury Mine, Metal and Smelter Workers Union, Local 598,[1] the Ontario High Court of Justice considered a Referee's decision that an indefinite lay-off of employees by Falconbridge constituted a permanent discontinuance, thereby triggering notice requirements of 16 weeks. On Application for Judicial Review by the employer, the court declared that no evidence had been tendered to indicate that the company intended the discontinuance to be permanent. Therefore the Referee was without jurisdiction to conclude that it was permanent and his order was quashed. (See Appendix 2 for this and subsequent case citations).

C. Discontinuance and Transfer of Operations

The issue of whether operations transferred from one facility to another constituted a termination was considered in Re: Telegram Publishing Co. Ltd.,[2] where a Referee was appointed pursuant to the provisions of the Employment Standards Act of Ontario. Here, the specific issue dealt with whether individuals terminated by the Toronto Telegram who were subsequently employed by the Toronto Star should be considered terminated due to a permanent discontinuance of operations.

The Telegram argued that these employees should be treated as having had their employment continued since certain assets and lists of subscribers were sold by the Telegram to the Star. This argument was rejected by the Referee because the transfer of assets was too minor to be considered as constituting the sale and continuance of the business. The decision of the Referee was the subject of an Application for Judicial Review brought by the employer before the Ontario Divisional Court. The court dismissed the Application and adopted the Referee's decision.

In Re: Dylex Limited and Amalgamated Clothing and Textile Workers Union,[3] the Referee, also appointed under the provisions of the Ontario Employment Standards Act, was called upon to consider the effect of a permanent discontinuance at one location of an employer and a continuation of that operation at a different location. The Referee referred to an earlier decision under the Employment Standards Act, Re: Agincourt Motor Hotel,[4] and determined that the group notice and severance provisions contained in the Employment Standards Act had to be interpreted on the basis of reading the Act as a whole in light of the mischief sought to be cured by the legislature. He ruled that in the case of group terminations, the mischief sought to be cured was the loss of employment suffered by individuals arising from the cessation of business at an establishment. In his opinion, the provisions made no reference to continuation of the business in some other location or to how the cessation was brought about. Therefore, citing the Agincourt case, it made no difference whether the business was continued by a third party at another location. The Referee held that the continuation of the same business at a different location by the same employer did not eliminate the possibility of application of the severance pay provisions.

In the wake of the Falconbridge case, the regulations in Ontario were amended to provide that notice of an indefinite layoff would be deemed to be notice of termination of employment. That regulation was applied by the Referee in the case of Re: Ontario Hydro and Ontario Employees Union Local 1000.[5] In that case the indefinite layoff of 64 employees engaged in a training program was found to be a termination as contemplated by the group termination provisions of the Employment Standards Act.

D. Meaning of "Establishment"

The interpretation of the term "establishment" as it pertains to the group or severance pay provisions in Canadian law causes little difficulty when there is only one work location involved. However, the effect of interpreting one or more locations to be either separate establishments or separate facilities constituting one establishment can often make a great deal of difference as to whether group notice or severance pay is required.

It appears that in interpreting the term establishment Referees and the courts have been guided by the "mischief" doctrine referred to above and have usually managed to interpret the term such that it enhances the benefits available to employees.

In the Telegram Publishing case,[6] the issue involved the status of circulation managers whose employment was terminated as part of the discontinuance of publication. The facts established that circulation managers were distributed among four city and two rural and suburban locations situated a considerable distance from the main publishing facility. Over 1,000 employees were dismissed as a result of the closing at the main facility, so there was little difficulty determining that the maximum group notice provisions applied to employees who worked there. However, there was an insufficient number of circulation managers at each satellite location to trigger the group termination provisions. The Referee decided that the circulation department, though geographically separate from the main operation, was nevertheless an integral part thereof. As a result, the closing of the main publishing facility and the circulation department were deemed to constitute the permanent discontinuance of one establishment.

Exactly the opposite situation confronted the Referee in Dylex.[7] Here the facts revealed that two locations had been operated by the employer. One location (The Lakeshore Plant) had traditionally manufactured men's clothing. The other location (The Weston Location) had at one time been primarily involved with women's clothing, but had started to do men's clothing as well. The employer decided to introduce a more advanced method of manufacturing men's garments to the Weston Plant. Both locations were unionized, with The Lakeshore employees being represented by the Amalgamated Clothing and Textiles Workers Union (ACTWU), and Weston being represented by the International Ladies' Garment Workers Union (ILGWU). The ACTWU successfully grieved the transfer of the advanced men's clothing manufacturing operation to Weston and were found to have jurisdiction over that work. Subsequently, the ACTWU successfully raided the ILGWU at the Weston facility.

The employer then decided to combine the Lakeshore and Weston operations at one location. Since the Weston facility was more modern, the decision was to close Lakeshore and transfer the work and some of the Lakeshore employees to Weston. ACTWU claimed severance pay under the Employment Standards Act on behalf of employees formerly working at the Lakeshore Plant who did not take jobs at Weston.

The Referee was confronted with a host of issues, including the determination whether the Lakeshore and Weston facilities were each to be considered as an "establishment" pursuant to the severance pay provisions contained in the Employment Standards Act. In contrast to the Telegram situation, if the locations were considered to constitute one establishment, the employees would be denied severance pay because the evidence was clear that there was no permanent discontinuance of operations. In fact, the production simply continued at the new location and even increased over time.

The Referee referred to the Agincourt case[8] and the reference therein to considering the "mischief" sought to be cured by the legislature in enacting the group termination provisions. He also referred to a U.S. State court decision, Liberty Trucking Company v. Department of Industry, Labour and Human Relations et al.[9] That decision set out various factors to consider when determining whether separate plants are one establishment. The factors cited include functional integrality, general unity, and physical proximity. The Referee considered that Dylex had integrated the two operations and that the employees were now represented by the same union and were manufacturing the same products for the same customers. These factors, he said, tended to suggest that the two locations should be considered as one establishment. However, competing considerations, including the fact that the operations had historically been considered separate by both the employer and the respective bargaining agents and the fact that jurisdiction for the advanced method of manufacture of men's garments had been won by the Lakeshore employees and included in the collective agreement were determinative in the case, thus resulting in the conclusion that the locations constituted separate establishments.

E. Triggering Notice and Severance Pay Coverage

Questions have arisen with respect to the inclusion or exclusion of certain employees for purposes of calculating the number of employees who have been terminated to determine application of notice and severance pay. For example, it is clear that certain employees who may not be entitled to severance pay under the Ontario Employment Standards Act are nevertheless to be included for purposes of deciding whether 50 or more employees have been terminated. Employees who have less than five years seniority are not entitled to receive severance pay, but they are included for the purpose of determining whether the severance pay provisions are applicable. Under Canada's various group termination laws, group termination or severance pay provisions do not apply to employees who refuse a reasonable offer of alternative employment. What is not clear is whether such employees are simply denied severance or notice themselves, or whether they should also be excluded from counting for purposes of triggering notice.

In the Dylex case,[10] the count was important because only 43 employees at the Lakeshore facility received outright termination notices. Another 104 employees received an offer of employment at the Weston facility, of which 64 accepted, 30 refused, and the other 10 were ultimately excluded for other reasons. There was no dispute between the parties that if employees receive an offer of reasonable alternative employment with the employer, they would be denied severance pay. However, it was not so clear that employees in this category should be excluded from the count to determine whether the severance pay provisions were triggered for the other employees. Given the wording of the Ontario Employment Standards Act: "where...50 or more employees have their employment terminated by an employer and the...terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment," the answer was not readily apparent. Having decided for the purposes of the legislation that the Lakeshore facility was an "establishment," the Referee had to decide whether employees receiving an offer were to be disregarded altogether for the purpose of determining whether a sufficient number of employees had been dismissed, or whether they were merely to be denied severance pay.

First, the Referee decided that the onus of establishing that the benefits available in the Act should be applied to a given situation rested with those asserting such a claim. Therefore, he excluded for the purpose of the count three individuals as to whom there was insufficient evidence to establish their status. Second, he concluded that a finding of separate status for two locations was not necessarily determinative of the issue whether each location should be considered as having a different employer. In this case, he determined that the employer was the same notwithstanding the fact that each was a separate division within the Dylex corporate structure.

Finally, the Referee concluded that the effect of subsections dealing with application or non-application of the severance pay provisions was to exclude certain employees, not only from entitlement to severance pay but also from the body of employees who are to be counted for the purpose of deciding whether the severance pay provisions had been triggered. However, it was still necessary to decide whether the offer was "reasonable" in order to consider whether the employees receiving the offer should be excluded. The Referee listed a number of factors to be taken into account in deciding the reasonableness of an offer. These included a comparison of wage rates, hours of work, nature of the work done, other terms and conditions of employment and the extent to which inconvenience was caused to the employees as a result of the change of work location. In addition, the Referee determined that consideration of the effect upon employee's seniority should be taken into account.

The Referee found that most factors were sufficiently similar between the two locations as to fall within a zone of "reasonableness." However, the facts established that all employees who went from the Lakeshore to the Weston location lost seniority as a result of joining the new bargaining unit. The Referee noted that the particular provisions of the collective bargaining agreement in effect for the Weston location diminished the role of seniority in terms of job security because the emphasis during a reduction of work was upon job sharing rather than layoff of junior employees. He concluded that no single factor could be considered in isolation, and found that the negative factors regarding seniority were insufficient to support a finding that the offer was unreasonable.

F. Severance Pay Eligibility

Occasionally a question has arisen concerning an employee's entitlement to severance pay if he leaves after the notice of termination is given, but before the effective date of termination. In the Telegram case,[11] the Referee had little difficulty extending severance pay even to individuals who left voluntarily prior to the end of the notice period. The opposite result was reached in Christie Brown and Company Limited v. The Retail Wholesale Bakery and Confectionary Workers, Local Union #650.[12] This case involved an arbitration wherein the union sought to enforce the severance pay provisions provided in the collective agreement which stipulated as follows:

> "Any full time employee, with two (2) years of service or more, whose employment is terminated by the company as a direct result of the closing of the plant shall receive severance pay as follows:..."

The employer planned to close the plant and had given notice of termination. However, some employees did not stay until the effective date of termination and the company refused to pay them severance. A majority of the Arbitration Board decided that the employees who left early were nevertheless entitled to severance pay on the basis that the notice of termination was effectively termination by the company. Upon appeal to the Manitoba Queen's Bench by the employer, the court quashed the decision, ruling that "notice" of termination and actual termination were not the same.

G. Avoidance Versus Evasion

On another matter, the Referee in the Dylex case[13] was called upon to determine whether the employer had constructed an arrangement or scheme intended or having the effect of defeating the true intent and purpose of the Ontario Employment Standards Act. The union argued that the offer of employment made by Dylex was calculated to bring the number of employees actually terminated below 50. The union contended that the offer was not made in good faith and that had all 104 employees accepted the offer the company would have been unable to absorb them. This contention had some justification as difficulties were encountered initially with absorbing even the 63 employees who did accept the offer. Some were sent home for a short period and others had their hours reduced for a while. However, they were all assimilated within a reasonably short period of time and the Referee, while granting that Dylex had carefully planned the closing so as to reduce the number of terminated employees, concluded that the Act invited such arrangements.

Dylex's actions were therefore analogus to "avoidance" in the field of income tax as opposed to being the equivalent of "evasion." Further, the employer was not defeating the intent and purpose of the Act so much as it was carrying out such intent and purpose. The legislation was designed to avert unemployment and by making a reasonable offer of alternate employment the employer was doing just that.

H. Summary

It is clear upon reviewing the various decisions which pertain to plant closings that it will be some time before the issues will be settled. However, judicial trends are emphasizing the remedial nature of the legislation and interpreting the provisions wherever possible so as to enhance benefits available to employees.

III. INDUSTRIAL ADJUSTMENT SERVICE

A. History

The Industrial Adjustment Services' predecessor, the Manpower Consultative Service (MCS), was established in 1963 by the federal government as one of a number of programs introduced during the 1960s intended to involve the government in planning concerning the Canadian economy and labor market. The MCS was intended initially to participate in the industrial relations community in order to enhance the transfer of labor from declining areas of the economy to expanding ones. The MCS concerned itself with the problems of employees facing termination of employment due to plant closings, technological change or layoffs. In conjunction with the establishment of the MCS, the federal government initiated the Canada Manpower Training Program designed to enhance the mobility of employees. As a member of the Organization for Economic Cooperation and Development, Canada had made a conscious decision to implement an active manpower policy to meet perceived challenges due to technological change and consequential mismatch of skills in the labor force, a labor force also perceived as underdeveloped and undertrained and lacking mobility.

Pursuant to these developments, the government revamped the National Employment Service, expanded the functions of its component agencies and developed new policies and programs related to enhancing the employability of the labor force. The MCS was staffed by civil servants with a background in manpower, training or the personnel field.

The MCS was intended to draw on expertise in the private sector in order to facilitate the adjustment of displaced workers, specifically by contacting employers who were undergoing a shut-down or significant layoff and encouraging the company to join with its employees or their bargaining agent in establishing a tripartite committee known as the Joint Consultative Committee (JCC) for the purpose of formulating a plan to accomplish the adjustment of workers facing displacement. The JCC is comprised of equal numbers of representatives of the employer and employees and chaired by an impartial third party chosen by the committee in consultation with the MCS representative. The function of the JCC is to conduct research and planning with assistance from the MCS representative and, on occasion, from outside consultants with a view to concluding a joint plan to assist the workers in finding new jobs. The committee's costs are shared by the participating parties.

Initially, the MCS operated under Orders-in-Council promulgated by the federal executive branch and was not constituted by formal legislation as such. The name was changed in 1984 at the request of Flora MacDonald, the then Minister of Employment and Immigration, who wished a more neutral term to replace the word "Manpower." As a result the agency was renamed the Industrial Adjustment Service (IAS).

In the late 1970s the IAS mandate was expanded to cover problems of human resource planning and the recruitment of workers in connection with major industrial developments. During the recession of 1982, the IAS was given responsibility for administering the federal "work sharing" program. This was a scheme introduced by the government as an alternative to laying off a number of employees and retaining the remainder in full-time employment. The work sharing program involved reducing hours of the entire work force and supplementing the income of employees with unemployment insurance benefits. In addition, the IAS encouraged and contributed funds towards the cost of productivity and market studies aimed at enhancing the health and prosperity of enterprise.

In 1985 the Canadian Jobs Strategy was formulated as a successor to the active Manpower Policy, which had been in existence since the 1960s. The Canadian Jobs Strategy involved heavier emphasis on training and incentives for training as a reflection of the federal government's attempt to address the perceived massive structural changes affecting the Canadian economy and forecasts that such changes would continue and intensify. The IAS was given responsibility for the "Community Futures" aspect of the Canadian Jobs Strategy, to be administered on a regional basis by regional managers of the IAS. Community Futures represented an attempt to interface the various government sponsored training programs at the provincial and federal level with the equally numerous planning agencies also established at the provincial and federal level. The rationale was that each of these provincial agencies needed to have some coordination and consultation with federal agencies such as the Canadian Occupational Projection Systems (COPS), which was concerned with attempts to project occupational demands and supply.

However, despite the changes in increased responsibilities, the IAS remains very similar to its predecessor, the MCS, in focusing upon the adjustment of workers displaced due to plant closings, technological change or mass layoffs, through the mechanism of the Joint Consultative Committee.

B. Organization

The IAS is a reactive organization whose involvement depends on its ability to persuade the intended recipients to accept its services. In other words, in most jurisdictions laws requiring employers and employees to accept the services of the IAS either do not exist or are not enforced. The IAS program therefore is largely voluntary and this element of voluntarism is inherent throughout the entire process. Employees are not required to seek or accept assistance from a Joint Consultative Committee and the employer is not obliged to implement its recommenations. It should be noted, however, that in some provinces, such as Quebec and Ontario, the creation of Joint Consultative Committees can be mandated. As a practical matter, employer participation in establishing such committees is much higher than in those provinces where the authority to order creation of a committee does not exist.

Inducement to accept the services of the IAS is provided by financial incentives. These incentives take the form of cost sharing arrangements to allow assessment, technical advice, consultation and assistance in dealing with the numerous government agencies and programs which have been created for the purpose of providing assistance in a given situation involving displacement of workers.

Even though it is a federal program, the IAS is available to employers not directly subject to federal jurisdiction. Normally, these would be employers who would be covered by the group termination provisions of provincial laws.

The IAS is administered by a national director headquartered in Ottawa and by regional managers situated in the various provinces. (See Appendix 3 for a list of Regional Offices.) In general, the regional managers are responsible for contact with employers and employees or their representatives. The IAS relies on intelligence gathering or sources from within a particular provincial government to identify possible candidates for using the services of the IAS. Contact is then made with the employer or bargaining agent and discussions commence with a view to organizing a Joint Consultative Committee and concluding a Joint Consultative Agreement.

As a practical matter, the IAS identifies most of its potential clients by operation of the group termination provisions of provincial laws. That is, because emloyers involved in large-scale closings or mass layoffs are required to give advance notice of such closings or layoffs, the IAS is able to identify those employers who may have a need for its services.

Upon initial contact, an IAS industrial consultant will sit down with the parties, outline the programs and services available through the IAS, and seek the parties' acceptance of the IAS services. In some provinces, the equivalent provincial agency may also be involved.

Once agreement in principle has been reached the IAS consultant prepares a document (Joint Consultative Agreement, see Appendix 4), which is intended to detail the objectives, budget and cost sharing aspects of the IAS program. The IAS consultant also may assist the parties in the selection of a chairperson and acts as an advisor to the chairperson and serves as an ex officio member of the Joint Consultative Committee.

The costs of the Joint Consultative Committee are usually shared on a 50-50 basis between the IAS and the employer. In some cases a particular province may contribute a share. For example, in Quebec the division is always one-third, one-third, one-third. Previously, if a bargaining agent for the employees existed, the union was required to contribute to the cost ot the Joint Consultative Committee. However, this practice was discontinued in the 1970s and it is not likely the program will be changed again to require the union to provide a share of the funding.

C. Policy

The IAS program originally was premised on the policy of the government that the economic well-being of Canada depended on the effective utilization of manpower. It was believed that market forces left to themselves would not respond quickly enough to changes in technology, economics and the expansion of industries requiring new or different skills.

In addition, the government was concerned that the British model of resistance to technological advances might be repeated in Canada. It also was believed that the support of organized labor was necessary to avoid social and economic disruption caused as a result of labor resistance to change in the fabric of the economy. Labor support could only be achieved, it was contended, if unions perceived that the process of adjustment was carried out in a fair and equitable manner with their full and equal participation.

The government also believed that advance planning by government agencies might serve to enable business, government and labor to forecast changes and emerging needs for new or different skills in ~~time~~ to be ready when changes actually occurred. Without the support of organized labor and some degree of central government planning, the government was of the view that Canada might not keep pace with developments and improvements elsewhere. Accordingly, an interventionist policy seemed appropriate.

In addition, it was clear that successful adjustment of displaced workers would shorten or eliminate periods of unemployment that might otherwise occur if employers and employees were left to their own devices in dealing with terminations brought about as result of technological or economic change. The IAS was seen as a means of securing financial commitment from the employer so that the costs of displacement would not be borne entirely by society. These employer-supported costs included not only the expense of running the Joint Consultative Committees and financing their operations, but also potentially the cost of training programs, early retirement benefits and so on. As a result the IAS was intended to play a role in reducing financial pressure upon the government's social welfare network.

Finally, the IAS was seen as a means of promoting cooperation and understanding between employers and employees and their representatives. It was believed the joint consultative process would have a salutary effect on labor relations because of its non-adversarial structure. Obviously, this factor would be meaningful only to the extent that the situation did not involve a complete closure. However, in the context of a continuing operation, it was hoped the JCC would establish the basis for a more lasting relationship between the parties and would change the nature of the relationship from an adversarial one, to one that encouraged joint efforts to find solutions in a more peaceful setting. It was believed that if the parties engaged in a process that involved joint input, planning and decision making, more trust and mutual respect would be developed as a result. The IAS and the joint consultative process also could help dissipate worker feelings of alienation and powerlessness in the face of technological change or fluctuations in the economy.

Today, the IAS is seen as a potential contributor to more effective planning for future developments. The problem of labor deployment and redeployment in the face of large scale and often confusing changes to the economic structure of the nation is one which the government believes is best addressed with input from all sectors of society. The Joint Consultative Committees therefore represent a source of research and practical experience which can be drawn uoon by the government in order to facilitate its efforts to plan and provide for changes to Canada's mixed economy.

Currently the IAS is attempting to take a more proactive stance. The passive and reactive nature of the IAS, as it has traditionally functioned, is seen as a shortcoming considering the relatively short period of time within which the IAS can react to an announcement of displacement due to a closing, technological change or mass layoff. Initiatives are being taken by the government to inject the IAS into situations where no particular displacement is on the horizon, but where experience indicates that displacement will inevitably occur. The government also hopes that the IAS, by getting involved at an earlier stage of the process, may be able to slow or reverse deterioration in a particular enterprise, thus avoiding the necessity for a closure or mass layoff. As a result, the IAS is attempting to formulate an early warning system and to convince employers and employees or their representatives to provide for the establishment of a Joint Consultative Committee in circumstances involving no immediate threat of displacement. There is also pressure being brought to bear by the government to persuade, or require, employers to give greater periods of notice in connection with strategic planning or forecasts that may involve displacement of workers either through technological change or contraction in the company's operations. It is believed that by giving the IAS a continuing role in strategic planning with a company and by involving the employees or their representatives in that process, preventive action or long-term adjustment plans can be formulated to reduce or avoid displacement.

D. Operation of Joint Consultative Agreement/Committee

The Joint Consultative Committee, as indicated, is made up of an equal number of representatives chosen by the employer and by the employees or their bargaining agent. If a union is in place, it will select the employee representatives. If there is no union, the employees are asked to choose their representatives. The total number of employee and employer representatives is usually not more than six. In addition, a neutral chairperson is chosen by the representatives of the parties. This person usually is drawn from the ranks of the education or industrial relations community. The IAS consultant provides technical advice and also acts as a liason between the Joint Consultative Committee and appropriate governmental agencies which may be in a position to provide assistance or money for training or adjustment. The IAS consultant also serves as an ex officio member of the JCC.

Once the Joint Consultative Committee has been staffed and an agreement signed, the Committee identifies the affected employees who wish assistance. The Committee distributes a questionnaire to determine the experience, training, skills and preferences of the employees who wish assistance. (See Appendix 5) At the same time, potential employers are identified and contacted by the Committee in writing as to the availability of employment opportunities. Government programs which can offer a source of assistance or serve as a means of adjusting employees are utilized with the advice of the IAS consultant. Adjustment options which the Committee may explore include finding alternative employment, enrolling in training or retraining, joining a mobility program, establishing in self employment on either an individual or a group basis, taking early retirement and so forth.

The Committee is to make decisions by consensus. In fact, there are rarely disagreements. In the event of disputes, the chairperson exercises the deciding vote. However, the Committee cannot commit the employer to a particular course of action.

The Committee also reviews the separation package prepared by the employer, which may include items such as severance payments, early retirement options, preferential hiring in other company locations, relocation assistance, retraining plans or financial assistance for workers to enroll in training or education, employment counseling and so on. The Committee is encouraged to evaluate the adequacy of this package and where advisable, seek to achieve improvements.

In appropriate circumstances, as part of the overall strategy to adjust displaced workers, the Committee may also consider some form of employee sponsored buy-out of the existing operation. This option is usually considered in the context of a complete closing where it appears that the operation is still viable.

Committee costs which can be shared by the IAS consist of the regular straight time salaries or wages of the employer and employee representatives while engaged in the actual business of the Committee; necessary disbursements in connection with the operation of the Committee, including travel within Canada, office supplies and clerical assistance; the salary of the chairperson and the fees of consultants that are appointed by the Committee and the IAS, although such consultants are usually accessed when their services are clearly cost effective. If the company insists on using its own consultants, it is not normally considered a shareable cost.

While there are exceptions, the usual cost per employee adjusted in the period following the 1982 recession is between $30 and $150. Interestingly enough, the experience has been that the approved budget for the operation of the Joint Consultative Committee is rarely exceeded and more often is greater than the amount actually spent. This factor is referred to commonly as "slippage." There are a number of reasons for slippage, including the fact that the IAS consultant sets a budget which is not likely to be exceeded to avoid having to go back for a further infusion of funds. The costs of the Committee are usually charged to the company, who then bills the IAS for its share of such expenses. Sometimes the company does not seek reimbursement for the full amount that it would be entitled to receive.

E. Effect of Unionization

The Industrial Adjustment Service works best if a bargaining agent is in place at the establishment. The Joint Consultative Committee is based on a tripartite system, with representatives of the employer and the employees appointed to the Committee. It therefore lends itself to an existing structure where the employees are organized. In an unorganized situation, the employees must choose representatives to act on their behalf. Obviously, where a bargaining agent exists, the process of choosing employee representatives is facilitated. Where ratification of a decision reached by the Joint Consultative Committee is needed, it can be accomplished easily if a bargaining agent exists. Representatives of the IAS generally acknowledge that it is more convenient dealing with an employer whose work force is unionized.

Another factor which directs the IAS to unionized establishments is that nonunionized employers tend to be much less receptive to the overtures of the IAS with respect to forming a Joint Consultative Committee. Although it cannot be statistically proven, it is the authors' view that nonunionized employers may be more likely than their unionized counterparts to use a gradual process of employment terminations in order to avoid triggering group termination provisions. Unionized employers are also more likely to get pressure from the union to establish a Joint Consultative Committee. In addition, unionized employers are generally more accustomed to dealing with industrial relations on a formalized basis and therefore may be more receptive to the prospect of establishing a structure to deal with displacement of workers. On the other hand, employers who have not had to deal with a union may prefer an unstructured and informal means of dealing with adjustment of displaced employees, if they adopt any means of doing so at all.

F. Effect on Employees

A number of studies have been conducted analyzing, in whole or in part, the effect upon employees who are the subject of a plant closure with or without the assistance of the IAS. Some of the results have been surprising even to the researchers. (See Appendix 6 for study references).

First, in an Executive Summary[1] prepared by the IAS and designed to briefly recount its operation and effectiveness, the IAS suggested that its service overall was able to shorten the period of unemployment for individuals--with respect to whom a Joint Consultative Committee was formed--by an average of two weeks. This translated to a savings of approximately $710 per IAS participant compared to an UI expenditure of $110 per person. These statistics were tendered as evidence for the cost effectiveness of the service, as well as its ability to reduce the disruption experienced by displaced employees. The benefits to society included reducing the pressure upon the unemployment insurance system as a result of shorter periods of unemployment. In addition, the summary contended that the existence of Joint Consultative Committees lessened worker resistance to change and improved industrial relations.

Other studies tend to reinforce this optimistic assessment of the IAS. In a paper entitled Labor Market Experiences of Workers in Plant Closures: A Survey of 21 Cases submitted to the Ontario Ministry of Labor in May, 1984,[2] the authors disclosed that the rate of reemployment among persons returning questionnaires was 61% overall, of which 68% of the male respondents were employed and 45% of the female respondents were employed. This figure rose to 78% if persons who had left the labor force were excluded. Similar results for reemployment were found in a study conducted approximately 12 years earlier entitled The Effect of Advance Notice in a Plant Shutdown: A Study of the Closing of the Kelvinator Plant in London, Ontario.[3] The authors found, after nine months from the date of the Kelvinator shutdown, that 62% of the employees were fully employed, 37% were not fully employed, of which four percent were working part-time and one percent had retired.

However, the source of reemployment has been found to primarily involve noninstitutional sources. The 1984 Ontario study[4] noted that 75% of respondents had found jobs through informal direct sources such as family, friends, direct approaches from other employers and so forth. Only nine percent had found jobs through the auspices of the Canada Employment & Immigration Commission. A paper prepared at the University of Manitoba entitled A Study of Three Plant Closings in Winnipeg[5] reinforced these findings and noted that the three individual shutdown cases, offers were forthcoming from noninstitutional sources in 84%, 57% and 69% of the respondents respectively. For example, the Canada Employment & Immigration Commission ranked fourth out of 10 as the source of jobs and second in terms of effectiveness. The Kelvinator study[6] also concluded that institutional sources were not the major means of finding jobs. It was indicated that 38% of the respondents found jobs by direct application; 21% from a friend or relative; 19% from Canada Manpower (the forerunner of the Canada Employment & Immigration Commission); nine percent from a newspaper advertisement; eight percent from contact by the company; two percent unascertained and three percent "other."

In terms of the effect upon earnings as a result of the shutdowns, most studies predictably indicated that reemployment earnings diminished in constant terms. Both men and women suffered a loss of earnings--in the case of men a nine percent loss, and 20% for women. The 1984 Ontario study,[7] however, indicated that nominal earnings rose from an average of $320 weekly; in the case of men to $354 from $323, and in the case of women nominal earnings diminished to $222 from $232.

In the Manitoba study,[8] statistics showed that on average nominal earnings went up in all three cases. However, in terms of constant dollars the average was, in all cases, a decline of between $40 and $50 per week. The study concluded that overall, 68% of respondents earned less in constant dollars.

The Kelvinator study[9] indicated that 43% of respondents stated their earnings had gone up or stayed the same; 50% said their earnings had gone down and seven percent either didn't know or didn't respond. (It was not mentioned, however, whether these responses were in terms of constant or nominal dollars. Given the date of the study (1970), it is likely that there would be relatively little difference between nominal and constant dollars.)

However, the most surprising result was that a plurality of respondents in all studies indicated that they perceived the overall job satisfaction to be higher in their new job than in the job from which they were terminated. The 1984 Ontario study[10] indicated that 42% of respondents liked their jobs better and only 33% indicatd that their jobs were worse than before. For Manitoba,[11] overall, 71.6% of respondents from all three studies liked their jobs better. This ranged from a low of 64% in one case to a high of 81%. The Kelvinator study[12] suggested that overall 47% of respondents rated their new job higher, 24% rated it the same, 26% rated their job lower than before and three percent did not know or did not answer. The Kelvinator figures were categorized into specific factors of which type of work received a 43% "higher" rating as opposed to a 17% "lower" rating and job security, perhaps not surprisingly, was preferred by 34% and rated lower by only 14%. However, a plurality of 40% indicated they didn't know.

One study, the 1984 Ontario paper,[13] provided statistics as to the change in the rate of unionization before closure and afterwards. This figure is significant given the wide base of the study comprising 21 closures. The authors found that from a rate of 68% at the time of closure the incidence of unionization fell to 39% after the displaced employees found new jobs.

Several general conclusions can be reached as a result of these studies. First, institutional sources, while not the major factor in locating new jobs, definitely play a role, one that appears to be increasing with respect to more recent studies. In terms of effectiveness, institutional sources rate relatively high. However, noninstitutional sources provide the primary means of reemployment and therefore unreasonable expectations should not be held with respect to the ability of institutional sources to play the primary role in adjusting workers.

Finally, although earning rates appeared to decline as a result of a closure, job satisfaction went up. Some of the more hyperbolic comments regarding the negative effects of plant closures should therefore be discounted.

IV. EMPLOYER OPINION

A. Employees Who Entered Into Joint Consultative Agreement

Employer acceptance of the IAS varies widely depending on the region in question. In Newfoundland, the Regional Director reports only a 50% acceptance rate. In Nova Scotia, a majority of employers who are invited to sign a Joint Consultative Agreement do so. In Quebec, the vast majority of employers enter into agreements. However, this is largely explainable by the fact that forming an adjustment committee is mandated by law in Quebec. In Ontario, 95% to 98% of employers who are approached agree to form a committee. This too may be explained by the fact that in Ontario the Labour Minister can require formation of a committee. In Manitoba, roughly 60% of employers have agreed to the formation of a committee. Again, under recent changes to Manitoba's Employment Standards Act, creation of a committee can be ordered by law.

Representatives of the IAS from all regions indicate that the reaction of employers who have gone through the Joint Consultative process is almost invariably favorable. The IAS also claims a high success rate in terms of workers adjusted relative to the number that apply for assistance. In order to verify these statements, the authors prepared and distributed questionnaires to companies that had been involved with a group termination or mass layoff within the last few years in Manitoba. The limitations of this project did not allow for a wide survey, for example, to employers in Ontario. However, since Manitoba has a well developed and highly diversified manufacturing sector it was believed that responses from employers within the province would be reasonably representative. No claim is made with respect to statistical significance. However, where possible, the results were compared with statistical surveys in other regions and there does appear to be a high correlation of results within those areas.

The questionnaire asked the company to indicate the type of business it engaged in, whether a union was present and the nunmber of workers employed. The questionnaire also asked the number of employees terminated, whether the termination involved a complete or partial closure, whether notice was given and whether the company entered into a Joint Consultative Agreement. Where a committee was formed, the company was asked to describe the activities and success of the committee. Respondents were asked to assess the service in terms of effectiveness, satisfaction, cooperation and whether the employer would use the service again. Finally, the company was asked two hypothetical questions: first, whether it would be in favor of making the service mandatory; and second, whether legislative requirements to justify a closure would have an effect on investment decisions.

Approximately 60% of the respondents indicated they had accepted the overtures of the Industrial Adjustment Service and entered into a Joint Consultative Agreement. Virtually all of the respondents who had agreed to form a committee gave assessments which could be considered favorable. Only one respondent indicated any reservation with respect to utilizing the services of the IAS in the future. That situation appeared to involve the use of a JCC chairperson who was not considered particularly effective.

The satisfaction rate was generally high. On a scale of one to 10, most respondents were in the six to eight area. Interestingly, even the respondent showing the lowest satisfaction rate (four out of 10) still indicated it would be prepared to deal with the IAS again.

Perhaps the most significant result was that with but one exception, the respondents who used the service rated its effectiveness lower than their satisfaction with it. The effectiveness rating ranged from a low of three to a high of eight with most responses in the five and six area. This tends to suggest that although the respondents generally liked the service and perhaps appreciated the good corporate image that cooperation with the government service gave them, they did not find it to be particularly effective.

Consistent with the generally favorable overall response, the respondents indicated that the representatives of the government agencies were not generally intrusive upon them and further, were reasonably cooperative. It should be noted, however, that many respondents rated the federal government representatives more highly in terms of cooperation than they did their provincial counterparts. One respondent in particular rated the provincial representatives very low in terms of cooperation. A number of companies indicated that they had been subjected to efforts by the provincial representatives aimed at averting the decision to close or layoff workers. The lower esteem accorded the provincial representatives may be unique to Manitoba.

As might reasonably have been predicted, the majority of respondents indicated they liked the voluntary aspect of the Industrial Adjustment Service and were against the prospect of legislation making it mandatory, although this opinion was not unanimous. Two respondents indicated that they were not against legislation requiring the formation of committees. It should be noted, however, that neither of these companies do business any longer in Manitoba.

The responses were strongly negative on the issue of legislation requiring companies to justify a closing. A number of respondents indicated such legislation would have a significant influence on investment decisions. However, other respondents indicated that such legislation would not play a large role in deciding where to locate, perhaps due to the fact, as one company indicated, that once a decision to close is made justification is not difficult because it is not normal practice for companies to close profitable operations.

Analysis of other studies appears to bear out the view that the Industrial Adjustment Service, while useful in placing some employees, does not achieve a uniformly high degree of general effectiveness. One study indicated that approximately 70% of displaced workers found jobs through friends, family or other informal sources while institutiuonal sources including the IAS, Canada Manpower, the company and the union, altogether accounted for approximately 25% of jobs found. Statistics from Ontario and elsewhere suggest that only about half of the employees affected even request assistance from a Joint Consultative Commttee, with varying rates of success achieved for those who do seek help.

It seems reasonable to conclude that the element of voluntariness which has historically applied with respect to the Industrial Adjustment Service and similar agencies contributed greatly to the generally favorable assessment of employers using the service. Because employers have voluntarily agreed to use the service, there is an extent of commitment that would not be present if the service were mandatory. Having started on a positive note, an employer is more likely to view the process positively following its completion. The voluntary element probably also has an effect on the government representatives, who know that if they intrude too much upon the employer's operation or seek to impose their will on an employer their services are more likely to be rejected by other employers or by the same employer on another occasion. This fact encourages cooperative rather than destructive behavior.

Finally, since most employers prefer to maintain a good image with the government, they are most likely to view as favorable an agency that is perceived as benign and can cause no further harm.

B. Employers Who Declined

Employers who declined the services of the IAS were not generally forthcoming as to the specfic reasons why they chose to turn down the offer of assistance. Some indicated that they felt the IAS was not worthwhile. Others appear to have already committed the maximum number of dollars towards adjustment and were unwilling to get involved in a process that would involve added expense. Still others formed their own joint committee along much of the same lines as are usual for a committee set up under the auspices of the IAS. Some employers appear to have avoided triggering group termination provisions pursuant to either provincial or federal legislation to intentionally avoid attracting the attention of government agencies.

The survey did not disclose any differential on the basis of size between employers who accepted the offer of the IAS and those who did not. Other studies, however, have indicated that smaller employers are less likely to form Joint Consultative Committees. In part, this may be due to the structure of the IAS itself. The agency is less interested in and less likely to become aware of smaller closings or terminations. As a matter of policy, Joint Consultative Agreements were not usually signed with employers where less than 20 workers were affected.

Some employers, although they did not accept the IAS, still support the concept. However, they are strongly in favor of voluntarism. One employer who favors the IAS, even though it did not utilize its services, had this to say:

> "Concentration on voluntary programs stresses creativity and problem solving. In dealing with mandatory controls, too much effort is wasted by industry and government trying to outwit each other. Strong, positive and creative voluntary programs will attract industry cooperation."

It is noteworthy that this employer committed between $15,000 and $20,000 in an effort to adjust 95 employees, although there was no indication in the response to the questionnaire how many employees were successfully adjusted. This computes to an expenditure of between $150 to $200 per employee affected. That is in excess of the amount usually committed on a cost sharing basis pursuant to the signing of a Joint Consultative Agreement.

Employers who declined to use the IAS did not generally feel that anything had been lost as a result. Although the possibility exists that this view is somewhat self-serving, the generally low rates of overall effectiveness of the IAS, in terms of jobs located as a percentage of the total, would tend to support such opinions. It should be noted that all employers, including all respondents who declined, nevertheless went to considerable effort to assist displaced employees. It is possible that employers who declined the services of the IAS and who made little or no effort to help employees would also be unlikely to respond to a request for information that would tend to show them in a bad light. There appears to be little question that the IAS would confer a worthwhile service in circumstances where the employer was otherwise not inclined to commit much time, effort or money in an effort to adjust employees. Where employers are prepared to commit considerable effort and financial resources in an effort to minimize the effects of a group termination, the IAS may still make a contribution, but not necessarily an essential one.

There are probably a number of reasons why smaller enterprises are less likely to become involved with the IAS. As mentioned, the IAS tends to focus upon larger enterprises and is more likely to become aware of larger terminations simply by virtue of the advance notice requirements. Moreover, smaller employers are not only not as visible but are generally less sophisticated and less oriented to institutionalized ways of doing things. It is obviously less difficult to place smaller numbers of individuals and therefore the employer, as well as the IAS, may perceive less need to become involved with the other. Finally, a group termination in a smaller enterprise is more likely to involve a closing rather than a lay off and therefore it is more difficult to locate persons in a position to make decisions and exercise authority.

C. Effect of Unionization

There appears to be a more marked disinclination upon the part of unorganized employers to become involved with the IAS. In the survey, one-third of the companies who declined the IAS were non-union while one-seventh of the employers who accepted the IAS were non-union. Overall, statistics indicate that 50% of the employers utilizing the IAS are union, indicating that unionized employers are disproportionately represented among the clients of IAS. The general ratio in Canada is approximately 35% unionized and 65% non-unionized. In part, this can be explained by virtue of the fact that plant closings may occur more often in unionized establishments than in non-union ones. For example, in the survey conducted by the authors, 80% of the respondents who had been involved in a group termination were unionized. This startling ratio is not duplicated in other studies, but indications are that the trend is there, while not as dramatic. This trend is also supported by the fact that most studies show the source of new jobs for displaced workers to be primarily from non-union employers.

Again, there are probably many reasons for the fact that non-union employers tend to use the IAS less than their unionized counterparts. Non-union employers tend to be smaller, and smaller employers are less likely to become involved with the IAS. In addition, non-unionized employers may be more suspicious of government agencies, particularly when a substantial proportion of government employees, including the members of the IAS staff, are unionized. Although there is no evidence to support the view that IAS employees might tend to promote unionization within the work force of a client company, non-union employers, particularly those who are not closing completely, may not be prepared to leave this to chance.

D. Summary

In summary, then, employers who have gone through the Joint Consultative process generally express favorable views as to the experience, although they appear to set fairly low expectations as to effectiveness. Of employers who declined, some appear to have done so because they considered the IAS to be superfluous. Others simply wanted to avoid, for various reasons, any contact with government whatsoever. It is suggested that the generally favorable views of employers who have utilized the service are due in large part to the element of voluntarism which provides a sense of commitment among those employers and also confers a substantial incentive on the part of IAS representatives to "sell" their service and satisfy their "customers." Smaller employers are less likely to be involved with the service because of a mutual opinion that the IAS is less applicable to small employers. Non-union employers, which tend to be smaller on average than unionized employers are less likely to be involved in a group termination in the first place, and less inclined to enter into a Joint Consultative Agreement with the IAS to avoid attracting the attention of government and organized labor.

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[NOTE: In the interest of economy, the above-mentioned Appendices were retained in the files of the Committee.]

The National Center on Occupational Readjustment, Inc.

Information and publications available from NaCOR:

Managing Plant Closings and Occupational Readjustment: An Employer's Guidebook is a comprehensive examination of successful planning and program options available to managers facing a work force reduction or plant closing. It is part of a broad effort by concerned members of the business community to exercise a responsible role in minimizing dislocations caused by plant closings, consistent with the efficient functioning of our economic system. (238 pages; $40 to non-sponsors).

Regulatory Plant Closings and Mass Layoffs: A Summary of Foreign Requirements details current plant closing and individual termination laws in European Community member states, Sweden and Japan. (123 pages; $20 to nonsponsors).

Why Plants Close: Growth Through Economic Transition focuses on the reasons for plant closures and some of the many positive efforts currently underway to assist dislocated workers. Acknowledging the harmful effects of plant closings and mass layoffs, this pamphlet sets these events within the broader context of economic dynamicism and the ability to create jobs. (12 pages; minimum order $10).

NaCOR Clearinghouse: a bimonthly publication that analyzes articles on relevant plant closing and major work force reductions from publications across the U.S. (Free to sponsors, $95 annually to others).

Legislative Status/Analysis Report: a current, objective review and anlysis of major plant closing legislation at the federal, state and local level. (Free to sonsors; $95 annually to others).

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For further information on NaCOR activities, publications or other benefits of sponsorship, please contact:

Gretchen E. Erhardt
Director

Senator METZENBAUM. Thank you all for your cooperation.

[Whereupon, at 12:55 p.m., the Joint Subcommittee hearing was concluded.]

ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

THURSDAY, MARCH 26, 1987

U.S. Senate,
Subcommittee on Employment and Productivity,
and
Subcommittee on Labor,
Committee on Labor and Human Resources,
Washington, DC.

The Joint Subcommittee Hearing convened, pursuant to notice, at 9:37 a.m., in room SD-430, Dirksen Senate Office Building, Senator Paul Simon (chairman of the Subcommittee on Employment and Productivity) and Senator Howard Metzenbaum (chairman of the Subcommittee on Labor) presiding.

Present: Senators Simon, Metzenbaum, Hatch, Quayle, and Adams.

OPENING STATEMENT OF SENATOR SIMON

Senator Simon. The Subcommittee hearing will come to order.

We are taking a look at this whole question of dislocated workers and readjustment assistance legislation. We are two subcommittees, and I am pleased to share the honor of chairing this with Senator Metzenbaum, the Chairman of the Subcommittee on Labor.

Let me read—because the last session was primarily focused on plant closing—let me read just a few paragraphs from the Secretary of Labor's Task Force on Economic Adjustment, because I think they are pertinent to where we are on that issue. It is clearly one of the things that needs to be settled here.

> Experience has also shown that the earliest notification possible leads to more effective delivery of public and private services to dislocated workers. The Task Force is in agreement with other studies that have concluded that advance notification is an essential component of a successful adjustment program.

There are several other quotes here, but let me just read two more.

> Many of the fears regarding advance notification have not been realized in practice. In this regard the Task Force found no evidence that the productivity of the work force is adversely affected during the notification period. It is also true that a recent General Accounting Office survey indicates that in too many plant closings and permanent mass layoffs, insufficient advance notice of job loss is given to make possible an optimal private or public role in the reemployment process.

The plant closing thing was the major focus of our first hearing. Today's witnesses are primarily going to be talking about the needs of the dislocated workers.

I also have a series of statements that people want to enter in the record, and they will be entered in the record at an appropriate place.

[The prepared statement of Senator Simon follows:]

OPENING STATEMENT OF SENATOR PAUL SIMON (D.IL.) HEARING ON PENDING DISLOCATED WORKER AND READJUSTMENT ASSISTANCE LEGISLATION BEFORE THE SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY AND THE SUBCOMMITTEE ON LABOR

March 26, 1987

GOOD MORNING, I AM PLEASED TO WELCOME ALL OF OUR WITNESSES TO THIS JOINT HEARING OF THE SUBCOMMITTEE ON LABOR AND THE SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY. WE HAVE A NUMBER OF WITNESSES TO HEAR TODAY. THEY WILL PROVIDE ADDITIONAL INSIGHT INTO ONE OF THE MOST SIGNIFICANT ISSUES FACING OUR SOCIETY -- HOW TO STEM THE TIDE OF PLANT CLOSURES AFFECTING THE NATION'S MAJOR MANUFACTURING AND OTHER INDUSTRIES AND TO RETRAIN THOSE WORKERS WHO HAVE LOST THEIR JOBS BECAUSE OF ECONOMIC CONDITIONS AND OTHER CIRCUMSTANCES BEYOND THEIR CONTROL.

S. 538, THE ECONMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT OF 1987 WAS INTRODUCED ON FEBRUARY 19th BY MY DISTINGUISHED COLLEAGUE FROM OHIO, SENATOR METZENBAUM, THE CHAIRMAN OF THE FULL COMMITTEE, SENATOR KENNEDY, AND MYSELF ALONG WITH ALL OF THE DEMOCRATIC MEMBERS OF THE COMMITTEE AND THE MAJORITY LEADER OF THE SENATE. SENATOR QUAYLE, WHO SERVES ON BOTH SUBCOMMITTEES, INTRODUCED S. 785, THE WORKER RETRAINING ACT, WHICH EMBODIES MOST OF THE PROVISIONS IN THE ADMINISTRATION'S BILL -- THE WORKER ADJUSTMENT ASSISTANCE ACT (S.539, THE TRADE EMPLOYMENT AND PRODUCTIVITY ACT OF 1987). BOTH BILLS CONTAIN SOME USEFUL PROPOSALS TO ENHANCE THE FEDERAL EFFORT AND EFFECTIVENESS IN THE WHOLE AREA OF EDUCATION, JOB SKILLS DEVELOPMENT AND WORKER RETRAINING FOR THOSE WHO HAVE LONG BEEN ASSOCIATED WITH AMERICA'S MOST IMPORTANT RESOURCE -- ITS WORKERS.

S. 538 ALSO CONTAINS WHAT SOME BELIEVE TO BE A CONTROVERSIAL PROVISION, A SIMPLE REQUIREMENT THAT NOTICE BE PROVIDED TO THE AFFECTED WORKERS AND THE PUBLIC OFFICIALS WHO WILL BE DIRECTLY AFFECTED BY A PLANT CLOSING. ALTHOUGH THE SECRETARY OF LABOR'S TASK FORCE ON ECONOMIC ADJUSTMENT AND WORKER DISLOCATION REACHED NO CONCLUSION ON THIS IMPORTANT ISSUE, IT DID SAY CATEGORICALLY:

"Experience has also shown that the earliest notification possible leads to more effective delivery of public and private services to dislocated workers."...

"The Task Force is in agreement with other studies that have concluded that advance notification is an essential component of a successful adjustment program...."both survey and interview participants note that advance notice is beneficial to employees and is an essential element in a plant closure program," because notice facilitates greater program participation and because " a functioning plant is perhaps, the programs single-most important resource.'".....

"....Many of the fears regarding advance notification have not been realized in practice. In this regard the Task Force found no evidence that the productivity of the work force is adversely affected during the notification period."

"... It is also true that a recent General Accounting Office survey indicates that in too many plant closings and permanent mass layoffs, insufficient advance notice of job loss is given to make possible an optimal private or public role in the reemployment process...."

WHILE THE TASK FORCE REACHED NO CONCLUSION, IT IS CLEAR THAT THE OVERWHELMING EVIDENCE SUPPORTS SOME SORT OF A NOTICE PROVISION, OTHERWISE THERE CAN BE NO "RAPID RESPONSE," NOR ANY ABILITY TO BRING TO BEAR THE KINDS OF RESOURCES THIS BILL WOULD PROVIDE.

THAT BRINGS ME TO WHAT I THINK IS THE CRITICAL ISSUE BEFORE THIS COMMITTEE AND THE WITNESSES HERE TODAY -- WHAT KIND OF SERVICES AND WHAT DELIVERY MECHANISM OR VEHICLES SHOULD BE USED TO ENSURE MAXIMUM IMPACT AND A POSITIVE RESULT. IN OTHER WORDS, WHAT CAN WE DO TO ADDRESS THE EDUCATION AND TRAINING NEEDS OF THE 11 MILLION WORKERS WHO LOST THEIR JOBS BETWEEN 1981 AND 1985 (ACCOUNTING FOR ONE-THIRD TO ONE-FOURTH OF ALL ADULT UNEMPLOYMENT IN AMERICA), MORE THAN ONE MILLION OF WHOM ARE STILL OUT OF WORK! S. 538 CONTAINS ANOTHER EXTREMELY IMPORTANT PROVISON BY INCLUDING DISPLACED HOMEMAKERS WITHIN THE DEFINITION OF "DISLOCATED WORKER" UNDER THE JOB TRAINING AND PARNERSHIP ACT. THIS WILL REMOVE THEM FROM "SECOND-CLASS" STATUS IN THE PROGRAM. I KNOW THAT MY COLLEAGUES FROM MASSACHUSETTS AND UTAH JOIN ME IN SUPPORTING THE INCLUSION OF DISPLACED HOMEMAKERS UNDER TITLE III, JTPA.

WE HAVE ALREADY SPENT MOST OF THE TIME IN OUR FIRST HEARING TALKING ABOUT PLANT CLOSING. TODAYS WITNESSES HAVE BEEN ASKED TO FOCUS THEIR REMARKS ON HOW BEST TO MAKE THE NEW $640 MILLION AVAILABLE TO MEET THE NEEDS OF DISLOCATED WORKERS. I TRUST THE WITNESSES WILL COMPLY WITH THAT REQUEST FROM THE CHAIR.

I WANT TO REMIND ALL WITNESSES THAT YOUR FULL WRITTEN STATEMENTS WILL BE ENTERED IN THE RECORD IN FULL AND THAT YOU HAVE **FIVE MINUTES** IN WHICH TO SUMMARIZE YOUR STATEMENT ORALLY. THIS DEVICE

IN FRONT OF ME WILL WARN YOU -- WITH A YELLOW LIGHT WHEN YOUR FIVE MINUTES IS ABOUT TO END -- AND I WILL INTERRUPT YOU AT THE CONCLUSION OF THE FIVE MINUTE PERIOD.

I WANT TO ENTER SEVERAL STATEMENTS IN THE RECORD, FOR THOSE WITNESSES WHO WERE INVITED BUT COULD NOT BE PRESENT IN PERSON: JOHN L. CLENDENIN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER OF THE BELLSOUTH CORPORATION FOR THE NATIONAL ALLIANCE OF BUSINESS; LEO R. TOUPIN, PRESIDENT OF JEFFBOAT, INC. AND CHAIRMAN OF THE HOOSIER FALLS PRIVATE INDUSTRY COUNCIL AND CHAIRMAN OF THE INDIANA PIC CHAIRS ASSOCIATION; THE HONORABLE PAT SKINNER, A STATE REPRESENTATIVE FROM NEW HAMPSHIRE ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES; THE HONORABLE FRANK MILLER, CHAIR OF THE KANE COUNTY (ILLINOIS) BOARD OF COMMISSIONERS AND CHAIR OF THE NATIONAL ASSOCIATION OF COUNTIES EMPLOYMENT STEERING COMMITTEE; THE HONORABLE HUBERT H. HUMPHREY, III WHO SERVES AS ATTORNEY GENERAL FO THE STATE OF MINNESOTA; JAMES R. KING ON BEHALF OF THE WESTERN JOB TRAINING PARTNERSHIP ASSOCIATION; AND MR. CHRIS PRYOR WHO CHAIRS THE SOUTHERN WILLAMETTE PRIVATE INDUSTRY COUNCIL IN EUGENE, OREGON. WE WILL ALSO BE RECEIVING WRITTEN TESTIMONY FROM SEVERAL OTHER GROUPS COMMENTING ON BOTH BILLS, INCLUDING THE NATIONAL CONGRESS OF AMERICAN INDIANS, WIDER OPPORTUNITIES FOR WOMEN, THE NATIONAL COMMISSION FOR EMPLOYMENT POLICY, NATIONAL JOB TRAINING PARTNERSHIP, 70001 TRAINING AND EMPLOYMENT INSTITUTE, THE OPPORTUNITIES INDUSTRIALIZATION CENTER AND THE NATIONAL URBAN LEAGUE.

WE WILL HOLD THE RECORD OPEN FOR TEN DAYS TO RECEIVE THESE AND ANY OTHER STATEMENTS ON THESE BILLS.

SENATOR METZENBAUM?

Senator SIMON. Senator Metzenbaum.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. Thank you, Senator Simon.

I just want to say how pleased I am to be working with you, Senator Simon, on these joint hearings we are holding. This will be our last hearing, with the markup scheduled for late April in the Full Committee.

There are some times we have issues before us in which the issues are sort of black and white, and it is very simple; I can think of a lot of them, and I do not think I will enumerate them here.

But in this instance, we who are supporting the legislation want to make it clear that we are prepared to work with the critics; we are prepared to work with industry and with labor and with the Administration to try to work out particular problems. We do not want to be a party to doing anything that will be hurtful to working people nor to their employers. So I want to say, on behalf of Senator Simon, myself, and I think every other Member of this Committee, that our doors are open to you, and we are interested in making some progress with this legislation and not getting into a battle royal on this one. Let us find something else.

I think that this is a bill that possibly lends itself to working out some of those differences, and I know that we are prepared to try to do just that.

Thank you, Mr. Chairman.

Senator SIMON. Thank you.

Senator Hatch.

OPENING STATEMENT OF SENATOR HATCH

Senator HATCH. Thank you, Mr. Chairman. I am happy to be with you this morning.

This is the second hearing on S. 538, the Economic Dislocation and Worker Readjustment Assistance Act, but it really is the first hearing on the specific provisions for worker readjustment. In my opinion, Mr. Chairman, that is the most important part of this bill. It is the viable part of the bill, as I see it.

The Administration has recommended $980 million for the retraining and dislocated worker assistance program. This is a recognition of the fact that experienced workers are still a vital part of our economy, and we need their talents, loyalty and work ethic in our total labor force.

But if America is to grow economically, we must be prepared for change. We must be able to move capital and labor into more profitable ventures; we must be able to employ new technologies, and we have to have workers who can adapt their current skills as well as develop new skills.

I continue to support the JTPA and, of course, its Title III provisions. Title III has provided assistance for 145,000 workers during the last program year, and it has achieved a placement rate of something near, as I recall, close to 69 percent, which is a pretty good placement rate.

There may well be improvements that we can make in Title III, but I believe its success thus far, even given the limited resources, is due to the flexibility built into the system and to the partnerships that have been established at the State and local levels.

My own State of Utah has had its share of economic dislocation, but with the additional resources proposed by the Administration, I really believe we can help our neighbors get back on their feet.

I look forward to working with you, Senator Simon, and others on the Committee on this legislation which will improve our ability to serve these fellow citizens and to help them in a time of need.

I want to say a special word of welcome to Mr. Jack Klepinger from my State of Utah. I am glad to have you here. He is Chairman of the Weber-Morgan Private Industry Council, and I am very proud of the work that they do. He is also President of the National Association of Private Industry Councils.

Jack has been a leader in Utah in a number of innovative job training programs and in coordinating JTPA with other training and educational programs. We are really happy to have you here and look forward to hearing your testimony.

I want to thank you, Mr. Chairman, for holding this hearing.

Senator **Simon**. I thank you, Senator Hatch.

I would simply like to reinforce Senator Metzenbaum's words. I hope that this is an area where some practical compromises can get worked out that we can get legislation enacted.

At this time we will enter Senator Quayle's opening statement into the record.

OPENING STATEMENT OF SENATOR DAN QUAYLE

Senator **Quayle**. Chairman Metzenbaum and Chairman Simon, as ranking member of the Subcommittee on Labor and a member of the Subcommittee on Employment and Productivity, I am pleased that we are having a hearing today on legislative proposals to meet the needs of dislocated workers around the nation.

Today we will be receiving testimony from witnesses on a bill introduced by the two Chairmen, S. 538, and also on the Administration's proposal on worker retraining, which I have introduced as S. 785.

As I mentioned, my bill is based on the Administration's proposal contained in their competitiveness package, the Trade Employment Productivity Act of 1987, which would provide for one consistent worker retraining program at the federal level. This bill would amend Title III of the Job Training Partnership Act (JTPA) to provide a new program for rapid response to worker dislocation by providing basic readjustment and retraining services.

Other pieces of legislation to provide for new worker retraining programs have been introduced, but most of these readjustment packages are tied to legislation commonly referred to as "plant-closing" legislation. These proposals would establish a federal mandate to provide an advance notice to employees regarding the shutdown of a plant or business.

We all know that this plant-closing legislation is extremely controversial and threatens to tie up any legislation it is attached to. This proposal to increase funds for worker readjustment is too important to allow that to happen. That is why I introduced my worker retraining proposal as a free standing bill so that it can be considered unencumbered by the prospective battles over plant-closing legislation.

Let me briefly illuminate with a more personal reason. In Indianapolis, several major employers have recently indicated that they will be closing their plants. Hundreds, possibly thousands, of workers in the Indianapolis area will be affected by these shutdowns, and the workers will need assistance. I see this legislation I am introducing today as a way to help these dislocated workers, and to do so quickly. More money will be available under this bill to help more employees find new jobs. This is the goal I am after—getting people jobs. Should this legislation get tied up in battles over plant-closing provisions, we may not be able to help those dislocated workers.

The major objectives of the legislation are to establish an early readjustment capacity for workers and firms in each state; to provide comprehensive coverage to workers regardless of the cause of dislocation; to emphasize training and employment services rather than income support; to provide early referral from the unemployment compensation system to adjustment services as an integral part of the adjustment process; to foster labor, management and community partnerships with government in addressing worker dislocations; and to provide the flexibility to target funds to the most critical dislocation problems.

The eligibility of workers would be the same as under Title III of JTPA, and includes workers displaced by plant closings, mass layoffs, and other experienced workers suffering permanent job loss, regardless of the cause of dislocation. Unemployed farmers, and other self-employed individuals would also be eligible.

This is a key change, which will result in all workers being treated the same, despite their reason for dislocation. There is little rationale to maintain our two current dislocated worker training programs, Title III and TAA. Once an individual loses his or her job, the only important thing is the provision of services to help that person find a new job. Having two programs is confusing to employees and often slows down the provision of services as companies or workers try to figure out for which program they are eligible.

The services provided would be in two broad categories: basic readjustment services, including assessment, counseling, and job search assistance, and retraining services, including classroom and on-the-job training and relocation assistance.

A rapid response capability by the state would be established to assist workers affected by dislocation as quickly as possible. One of the key findings by the Secretary of Labor's Task Force on Economic Adjustment and Plant Closings showed that the earliest notification possible leads to more effective delivery of public and private services to the workers.

Governors would have statewide planning and oversight responsibility for grants, which would be made to substate areas. These substate areas could be one or more current service delivery areas (SDA) under JTPA.

Thirty percent of the funds would be allocated to each state for readjustment services and rapid response capability, with further allocation to substate areas. Fifty percent of the funds would be held for each state to draw on as needed, up to a pre-determined state target. The remaining twenty percent of the funds would be held by the Secretary of Labor for discretionary grants.

The legislation also includes several provisions contained in Administration proposals to better focus the public employment service (ES). States would have increased responsibility for determining the best mix of services to meet their needs, but those services would include assessment and testing, labor market information, job search assistance and referral to programs operated under JTPA. Greater coordination between the ES and JTPA would be required.

Because of the need for increased worker retraining funds, I hope we can move on this legislation quickly. As mentioned before, this program is too important to be tied up in a difficult political battle over mandatory plant closing legislation.

Chairman Metzenbaum and Chairman Simon, I look forward to these hearings and to the testimony of the distinguished witnesses.

Senator **Simon**. To all the witnesses, I would say we are going to enter your full statements in the record. We would ask that you summarize your statements. We will have the clock working. When the yellow light goes on, that means you have one minute left; the red light indicates just what it means everywhere else. We would appreciate your abiding by that so we can move into questions in the process.

Our first panel is composed of Leon Lynch, Vice President for Human Affairs for the United Steelworkers, and J. Bruce Johnston, the Executive Vice President of the USX Corporation.

Senator **Metzenbaum**. I want to say to the witnesses that I have another meeting, and I do not mean to be rude to you, but I wanted to come and indicate that my concern continues, but I am going to have to excuse myself. You are in good hands.

Senator **Hatch**. I have the same problem, Mr. Chairman.

Senator **Metzenbaum**. Even including Orrin, if he stays. [Laughter.]

Senator **Simon**. And let me add for the record that Mr. Johnston is accompanied by John S. Irving, Jr., from the National Association of Manufacturers, and Mr. Lynch is accompanied by Jack Sheehan, a frequent witness before this body, who is with United Steelworkers.

Mr. Lynch.

STATEMENTS OF LEON LYNCH, VICE PRESIDENT FOR HUMAN AFFAIRS, UNITED STEELWORKERS OF AMERICA, PITTSBURGH, PA, ACCOMPANIED BY JACK SHEEHAN, ASSISTANT TO PRESIDENT LYNN WILLIAMS, UNITED STEELWORKERS OF AMERICA, WASHINGTON, DC; AND J. BRUCE JOHNSTON, EXECUTIVE VICE PRESIDENT, USX CORPORATION, PITTSBURGH, PA; AND JOHN S. IRVING, JR., COCHAIRMAN, LABOR LAW SUBCOMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. **Lynch**. Thank you, Mr. Chairman.

Between 1979 and 1986, over 210,000 jobs in steel were lost. Furthermore, the membership of our union, which is basically a metals manufacturing and goods producing one, declined from 1.2 million members to just about 600,000 today.

According to a July 1986 GAO study of dislocated workers, 1.4 million workers were dislocated with 66 percent of the losses being concentrated in the manufacturing sector.

During the deliberations in the Department of Labor Task Force, another aspect of this socially disruptive environment in which dislocated workers often experience significant personal adjustments, there was the acknowledgment that—and I quote—"Some business closings and permanent layoffs are inevitable and can be a concomitant part of achieving and maintaining a competitive, healthy economy and a strong position in the international marketplace."

This reflection was also observed by other reports: The Office of Technology Assessment, the OECD, the ILO. I make these references to the inevitability of certain structural changes and the accompanying social hardships experienced by workers because there seems to be a basis for a consensus that a greater public sector response is needed to cope with the social and manpower problems evolving.

According to the Department of Labor Task Force's view—and I quote—"Responses to worker dislocation from both Government and private sector have been spotty and narrowly focused, and the United States lacks a comprehensive, coordinated strategy to deal with the problem."

The surprise, however, is to be found in the fact that business associations and corporate representatives of large industrial firms, even those undergoing sharp restructuring changes, have testified in opposition not only to the Economic Dislocation and Worker Adjustment Assistance Act, S. 538 and H.R. 1122, but even to the concept of early intervention in "dislocated" layoffs.

The Task Force certainly demonstrated—if reaffirmation was necessary—that plant shutdown measures do not mean plant shutdown barriers. Yet the opposition to the bill has been concentrated precisely on that main interpretation, namely, that the legislation will inhibit and restrict economic change.

The lack of notice as a general practice is indisputable, despite the insistence that voluntary notification is growing as a generally accepted practice. It is a practice more noted for its absence, according to the OTA report.

Previous legislative proposals had also coupled the advance notice obligation with private sector-mandated benefits, for example, the service pay, the health care coverage, since there were little or inadequate public sector measures. But in the 1985 version of the legislation, the mandated benefits were deleted.

Concentration was focused instead upon readjustment with notification as the first step in the process. Again the OTA report firmly states there is a broad consensus that advance notice is a humane thing to do and that notice facilitates effective displaced worker programs, allows time to plan and develop adjustment assistance.

We therefore strongly urge that S. 538 not be separated into two bills merely because their current emphasis upon competitiveness quite rightly notes the importance of upgrading workers' skills for engagement in a global market.

What we are dealing with, however, is the problem of worker displacement in which the process of readjustment begins with notification and consultation. Whatever legislative vehicle is utilized for enactment purposes, it is of the utmost importance that this integral relationship be maintained.

Thank you, Mr. Chairman, and I still have time.

Senator SIMON. I thank you. You are right. You have at least a full minute remaining. I want to commend you for your brevity, and I hope you set an example for all the other witnesses here. [Laughter.]

[The prepared statement of Mr. Lynch, with attachments, and responses to questions asked by Mr. Johnston follow:]

TESTIMONY

OF

LEON LYNCH, VICE PRESIDENT
HUMAN AFFAIRS
UNITED STEELWORKERS OF AMERICA

before the

Subcommittees of
Senate Employment/Productivity
and
House Labor

on

Dislocated Worker Retraining,
Education & Placement

March 26, 1987
Washington, D.C.

The enactment of Title III of the Job Training Partnership Act (JTPA) injected into the public forum the issue of the dislocated or displaced workers. There has developed an amazing consensus (certainly as the result of many governmental and academic studies), of the existence of this new type of unemployed worker and that, in the words of the DOL *Task Force on Economic Adjustment and Worker Dislocation* of which I was a member, "Worker dislocation constitutes a markedly different kind of unemployment in many respects." Perhaps the reality that the economy is undergoing such deep transformations or structural changes cannot be ignored or sidestepped as being an occurrence which has happened before as in our economic development. Unlike past experiences, the impact of the structural changes upon workers and their communities has been disruptive and chaotic without there being positive opportunities for transition into better jobs and potentially higher standards of living. The transition from the horse to the automobile, from the farm to the factory, from water barging transportation to rail was indeed tumultuous--but there was always the expectations of a better way of life. But such is not the case today. Terminated Steelworkers cannot expect to maintain their standard of living in any job opportunities being offered--although even those are few in numbers. Moreover, the reduction in steel jobs has been phenomenal in terms of time duration during which the job losses occurred. Between 1979 and 1986 over 210,000 jobs were lost. Furthermore, the membership of our union, which is basically a metals manufacturing and goods producing one, declined from 1.2 million members to just about 600,000 today. According to a July 1986 GAO Study, Dislocated Workers, 1.4 million workers were dislocated with 66% of the losses being concentrated in the manufacturing sector.

Period	Employment Decline	Annual Rate
1950-1960	78,200	-1.6%
1960-1970	41,900	-0.9
1970-1980	112,500	-3.1
1980-1986	162,000	-8.2
Total Decline	394,600	--
Average Rate	--	-13.8%

The OECD in reporting on measures to assist workers displaced by structural changes noted:

> Structural change is an ongoing process which has always been a feature of market economies and historically has led to higher growth in real output and improved living conditions. In recent years, however, many OECD countries have been experiencing a declining capacity to adapt their labor forces to the changing pattern of job opportunities resulting from structural changes in their economies. (Emphasis added).

During the deliberations in the Task Force, another aspect of this socially disruptive environment in which "displaced workers often experience significant personal adjustments," there was the acknowledgment that:

> ". . . Some business closings and permanent layoffs are inevitable and can be a concomitant part of achieving and maintaining a

> competitiveness, healthy economy and a strong position in the international marketplace."

This reflection was also observed by other reports:

- Office of Technology Assessment: "Plant closings and permanent mass layoffs are a continuing feature of American economy. Change in conditions of competitiveness and a rapidly growing field of competitors mean that while some companies will be created, flourish and expand, others will go out of business. . .and workers will be displaced." (Report: Plant Closing: Advance Notice and Rapid Response 1986).

- OECD: "At the same time, the reallocation of workers among firms, industries, occupations and/or regions required by structural change is considered essential if economic growth and new job creations are to result in a significant reduction of unemployment." (Report: Measures to Assist Dislocated Workers. 1986.

- ILO: "As indicated before, the need for restructuring of the steel industry is a necessary consequence of economic and technological developments and, as a principle, can, therefore. not be called into question. In fact, trade unions in many countries. . . do accept the need for restructuring of the industry. What is debatable. . . is the form which restructuring is to take and the methods by which it is planned and implemented. . . Structural changes are inevitable, and will continue to occur in the iron and steel industry in both industrialized and developing countries." (Iron and Steel Committee, Eleventh Session 1986).

I make these references to the inevitability of certain structural changes and the accompanying social hardships experienced by workers because there seems to be a basis for a consensus that a greater public sector response is needed to cope with the social and manpower problems evolving. According to the Task Force's view: ". . . responses to worker dislocation from both government and private sector have been spotty and narrowly focused, and the United States lacks a comprehensive, coordinated strategy to deal with the problem." The surprise, however, is to be found in the fact that business associations and corporate representatives of large industrial firms -- even those undergoing sharp restructuring changes -- have testified in opposition not only to the Economic Dislocation and Worker Adjustment Assistance Act, (S. 538 and H.R. 1122), but even to the concept of early intervention in "dislocated" layoffs.

The bill before this Committee, as already indicated, grew out of the realization that the peculiar characteristics of dislocated unemployment requires a special response if the adverse effects of needed structural changes are to be mitigated. The legislation essentially affirms the need for early intervention through advance employer notification in situations of plant closings or mass layoffs when the worker is permanently terminated or "is unlikely to return to his or her previous industry or occupation" so that basic readjustment services and retraining services could, through a rapid response system, be delivered.

The Task Force certainly demonstrated -- if resffirmation was necessary -- that plant shutdown *measures* do not mean plant shutdown *barriers*. Yet the opposition to the bill has been concentrated precisely on that main interpretation; namely, that the legislation will inhibit and restrict economic change.

When Secretary Brock established the Task Force in October 1985, the Congress had been addressing one aspect of the plant closure problem, i.e., whether advance notification of an impending shutdown or mass layoff should be given to workers and their communities . The lack of notice as a general practice is indisputable, despite the insistence that voluntary notification is growing as a generally accepted practice. It is a practice more noted for its absence. According to the OTA Report:

> "The GAO survey found 88 percent of larger establishments provided some kind of notice to at least some of their displaced workers, but many people got little or no specific warning that their jobs will be lost. For example, 30 percent of employers given no individual notification to blue collar workers, and another 34 percent give 2 weeks or less. In general, the amount of notice individuals receive is short."

Previous legislative proposals had also coupled the advance notice obligation with private sector mandated benefits; e.g., severance pay, health care coverage, since there were little or inadequate public sector measures. But in the 1985 version of the legislation, the mandated benefits were deleted. (Unfortunately, for many unorganized workers, without the benefit of collective bargaining, shutdown compensatory payments will not be forthcoming). Concentration was focused instead upon readjustment with notification as the first step in the process.

The Task Force activity, however, in evaluating the readjustment measures and their delivery system provided a valuable contribution to the development of a restructuring response system by indicating the inadequqacies of the current programs and by recommending very precise and substantive changes. S. 538 and the Administration's bill, S. 539, capture the essesntial parts of the Task Force's report on the measures. There is a great deal of similarity between the two bills:

- establishment of a dislocated worker function at both state and federal levels;
- creation of rapid response capacity and teams to coordinate readjustment measures;
- promotion of joint labor-management community partnership in addressing dislocations;
- provision of both employment-related and training services together with supportive services including income maintenance during training; and
- emphasis upon early intervention, especially through joint labor-management adjustment committees.

I wish to give special note to the Report's adoption of the supportive measures:

> "The Task Force believes that income support for dislocated workers should be of adequate duration to support substantive training and job search. Workers should have incentives to enroll earlier in training programs, and income maintenance should be continued on a reasonably necessary basis to encourage individuals to complete their training."

This statement constitutes a very positive endorsement of the observation that special characteristics of the structurally displaced worker -- mature, single-industry skilled, longer-term connection with the workforce, community-oriented, family obligated -- required income maintenance not as an extension of unemployment compensation but as a complement to a training enrollment. USWA experience with our displaced workers' training programs confirms this conclusion. It is our earnest expectation that the training-income linkage, as adopted in the bill, will be adequately financed so as to make a meaningful impact.

A greatly revamped dislocated worker adjustment assistance should certainly evolve from these two bills. To that extent, the Task Force provided a timely forum for identifying the needed changes in our manpower training programs.

However, the Task Force's report was not meant to be the exclusive scope of the response mechanism. The Task Force highlighted the fact that the public sector readjustment measures were inadequate if advance notification were not provided. Indeed the Task Force reviewed the adequacy of the public sector readjustment measures in the context of an immediate response system, i.e., early intervention. One of the Report's conclusions states: "Delivery of public services to affected workers should begin well before shutdown or layoff if possible." It would indeed be ironic if the adjustments elements or services are redeveloped and redesigned for immediate delivery and then to have the initiation of the delivery ignored or unchanged from current practice. According to the Report: "Experience also has shown that the earliest notification possible leads to more effective delivery of public and private services to dislocated workers." Other studies also substantiate that advance notification of a pending closure of a facility enhances the potential of adjustment. The OTA Report firmly states:

> "There is a broad consensus that advance notice is a humane thing to do and that notice facilitates effective displaced worker programs. . . allows time to plan and develop adjustment assistance."

In analyzing the international reactions of countries with steel capacity reduction pressures the ILO reaffirms the obvious:

> The experience of the countries most directly affected by the steel crisis shows that social measures in connection with restructuring of the industsry are most effective where the parties concerned start their consultations, discussions and negotiations as early as possible. The earlier employers, trade unions and, where appropriate, public authorities get in touch with each other to examine together the steps to be taken to deal with a reduction of employment in the industry, the greater are the chances of reaching solutions which are likely to prevent or limit workforce reductions or, where such reductions are inevitable as a last resort, to carry them out in a way which causes as little hardship as possible to the workers concerned. At the same time, early contacts between employers' and workers' representatives often help create a climate which facilitates solutions, avoids confrontations and disputes, and ensures that the agreed measures are carried out in a spirit of co-operation.

And yet, Mr. Chairman, it is unbelievable that some company executives vehemently assert that advance notification of closure is primarily designed and advocated as a means to prevent closure. Blind adherence to absolutist principles of managerial prerogatives is advanced as a justification for denying any mandated closure notification. The representative of the National Association of Manufacturers, J. Bruce Johnston (USX), blatently declares:

> ". . . the manifest objective is to attempt to legislatively repeal market forces by discouraging and preventing closings and layoffs rather than to simply provide notice to affected workers. . . /and provide/ guarantees against inevitable structural changes in the economy and in the business in which they are employed."

According to the representative of the Chamber of Commerce, Allen R. Thieme (Amigo Sales, Inc.):

> ". . . the imposition of legal constraints on employers to impede management's ability to close or relocate plants. . . fails . . . to solve the problems of dislocated workers. . . The bill represents an assault on our economic system."

Strangely, both these representatives extol the fact that notice is being given, albeit voluntarily. But no adverse consequences seem to follow: "Voluntary corporate practices and programs to mitigate the effects of plant closings on workers and communities are growing in number, effectiveness and sophistication." (Thiem)

This year's workers' dislocation bill is a marked improvement over previous bills in that it links adjustment measures to notification/consultation. While other versions sought a recognition for compensatory or severance benefits, this bill emphasizes that adjustment and replacement are direct and main objectives of a notification system. As a matter of fact, these objectives will be impaired without the early intervention. The United Steelworkers of America has successfully utilized the joint consultative process to develop adjustment programs for laid off Steelworkers. In our more recent contracts, despite their wage concessionary aspect, there was an expansion of the consultative process and an annual commitment of corporate financing:

Inland Steel	$210,000
Armco	300,000
Bethlehem	500,000
USX	600,000
LTV	975,000

We, therefore, strongly urge that S. 538 not be separated into two bills merely because the current emphasis upon "competitiveness" quite rightly notes the importance of upgrading workers' skills for engagement in a global market. What we are dealing with, however, is the problem of worker displacement in which the process of readjustment begins with notification and consultation. Whatever legislative vehicle is utilized for enactment purposes, it is of the utmost importance that this integral relationship be maintained.

HOW MANY WORKERS HAVE BEEN DISLOCATED BY BUSINESS CLOSURES AND PERMANENT LAYOFFS?

(1983-1984)

NUMBER OF WORKERS DISLOCATED

Number of workers per establishment	Number of establishments	Number of employees
50 to 99	8,520	313,400
100 or more	7,790	1,048,600
Total dislocated workers for establishments with 50 or more employees	16,310	1,362,000

Industry	Number of establishments	Rate of occurrence	Number of employees	Percent of total
Total	7,790	7.8	1,048,600	100
Manufacturing	4,650	13.2	694,900	66
Durable	3,050	17.7	472,000	45
Nondurable	1,600	10.2	222,900	21
Wholesale-Retail Trade	690	3.6	69,200	7
Wholesale Trade-Durable	270	11.6	22,800	2
Wholesale Trade-Nondurable	100	4.4	12,500	1
Retail Trade	320	2.2	33,900	3
Other	2,450	5.4	284,500	27
Services	1,750	4.4	181,100	17
Other than services	700	12.4	103,400	10

'An uncommon courage': Local 65's struggle

Strike and defense funds were used for a variety of programs, including food vouchers. From left are Treasurer Payton Granderson and Vice President Bobby Jackson processing the vouchers for Jerry Gutowski and Alberto Camarillo.

SOUTH CHICAGO, ILL.

"What will it be like when unemployment (UC) benefits run out," many USX lockout victims wondered aloud as their struggle entered its sixth month. However, this burning question did not affect their determination to continue "no matter what" until the company changed its position on issues such as contracting out.

For members of Local 65, USX South Chicago (Ill.) Works, this was a moot point. They made it through the longest work stoppage in steel history without UC. District Director Jack Parton called their struggle "one of uncommon courage."

"People ask us how did we do it. How did we last the 184-day lockout without unemployment compensation? We did it with the help of the union," Local 65 member Irma Spencer said proudly. "We did it because we had to. USX wanted to contract out our jobs. It was do or die for us and we knew that."

A third helper with 10 years of service, Irma is a working mother who is the sole support of two (of her three) children. "Family members helped, too. And we helped each other," she said, as she pointed to two Local 65 officers busily dispensing biweekly food vouchers.

Irma typifies the spirit that prevailed on the picket line, at the local union hall and in members' homes throughout the lockout. Not only did she serve picket duty, she volunteered as a union counselor to help others survive. Every agency offering help, such as energy assistance funds or food stamps, was pinpointed for members who were advised on proper procedures to apply for aid. "Times got real hard for us," she said. "But we weren't about to give up."

On a typical blustery Chicago midwinter day, a steady, orderly flow of members signed up for and received $20 food vouchers. Many wore "We Shall Overcome USX" sweatshirts and speculated on the outcome of the vote for a new four-year contract. "I voted to accept," Alfonso Garcia, a welder with 38 years of service, said. "We got what we wanted in contracting out language. It's an honorable settlement." With two boys, ages 11 and 14, to support, Alfonso and his wife survived on her part-time minimum wage earnings and with the help of the union. "Paid health insurance was a big help in that it took away a worry." Like many other members, he fell behind on the mortgage but the lender had received advance warning. "We'd pay half of the month's mortgage so they'd know we had good intentions," he declared.

Alfonso remembers the 116-day strike in 1959. "It was different then. No insurance, no Strike Fund," he recalled. "But I was able to get a part-time job then. Today, thanks to Reagan, there aren't any jobs around. Without a union, you're lost. We did what we had to do then, we did it now and we'll defend our union again when necessary."

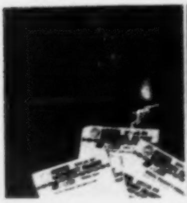
Willie Ross, Local 65 president, praised the solidarity and high morale which prevailed throughout the lockout. "Volunteers worked in the kitchen helping feed the pickets," he said. "Twelve of them worked shifts. Volunteers counseled our members, staffed the union hall, served on the picket lines—they helped us help each other."

Mark Collins, a boilermaker with 17 years' service, was instrumental in maintaining morale by providing a constant flow of vital information to members via a weekly lockout bulletin. This communications project, coordinated at the national level by Vice President George Becker, encouraged all USX locals to publish their own lockout bulletin. "We're planning to resume publication of our local union paper now that this lockout is over," he said.

For machinist Ed Girard, the settlement came in time to help him keep his home. "Hey, I voted to strike if necessary. We have no regrets because USX didn't give us much choice."

Director Parton pointed with pride to the emergency medical program for hospital and medical benefits, one for surgical benefits and an emergency medical fund which provided additional specialized medical help.

As Local 65 President Ross put it, "We'll keep fighting for unemployment benefits because it was a lockout, not a strike. Meanwhile, our members sent a signal to USX and to everyone in the union with their example. We're proud of each other." □

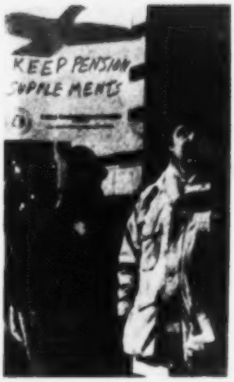


Mark Collins: local lockout editor

Ed Girard: no lockout regrets

Irma Spencer: the family helped

Alfonso Garcia: recalling 1959 strike



■ LTV — 51%
■ W-P — 10%
■ Other Steel — 13%
■ McLouth — 3%
■ Continental — 2%

■ All Others — 21%

SINGLE EMPLOYER PLANS
UNDER BANKRUPTCY

More than three-quarters of the pension liabilities assumed by the federal Pension Benefit Guaranty Corporation in the past decade have been those of steel companies, covering well over 100,000 active and retired USWA members. McLouth is partially terminated.

On Jan. 23, George Jonas, Sr., an 85-year-old retired steelworker from Monongahela, hit the top prize in the Pennsylvania lottery—$1,000 a week for life, with $1 million guaranteed. It wasn't something he had counted on.

People ought to be able to count on dignity and security in their old age, however. That ought not to depend on luck, but be guaranteed. Indeed, millions of Americans have worked hard for a lifetime in the belief that they had such a guarantee . . . that they had earned the right to some rest, happiness, and tranquility.

Social Security and Medicare are among the underpinnings of such belief. So, too, is the nation's private pension system, in the establishment and protection of which the USWA has played major roles.

Workers' pension funds represent a huge pool of money in the American economy. It's been estimated that by 1995, less than a decade from now, these funds will have over $4 trillion in assets and will own well over half of the stocks and bonds of U.S. corporations.

Yet, today, the promise of pensions has been broken for thousands and thousands of Americans and their families. And the promise has become tenuous for millions more.

When LTV retirees received their February pension checks, not many days after Jonas won the lottery, those of almost 8,000 early pensioners had been reduced by $400 or more. Many Steelworkers who had worked for Wheeling-Pittsburgh, Continental Steel and other companies had earlier found themselves shortchanged on pension benefits—and a hell of a piece of change it's been.

The assault on pension guarantees is threatening not only those already retired, but also those in the nation's active work force who some day will expect to do so.

Nowhere is the problem more dramatically illustrated than in the American steel industry, where a growing number of companies are filing for bankruptcy and voluntarily or involuntarily terminating their pension programs. In a prepared statement for a Feb. 20 hearing in Pittsburgh on pension problems by the House Labor-Management Relations Subcommittee, USWA President Lynn Williams listed many that have gone into bankruptcy in just a few short years: LTV, the largest bankruptcy in U.S. history, which embraces three steel companies—Jones and Laughlin, Republic Steel, and Youngstown Sheet and Tube; Wheeling-Pittsburgh; Kaiser Steel of Los Angeles, which just the previous week entered Chapter 11; McLouth Steel of Detroit; Phoenix Steel and Mesta Machine in Pennsylvania; Eastern Stainless Steel of Baltimore; Guterl Steel and Roblin Steel in the Buffalo area; Van Huffel Tube and Enduro Stainless in Ohio; any number of steel foundries; and Continental Steel of Kokomo, Ind., a company now in liquidation.

In delivering that testimony for Williams and the union, USWA Legislative Director Jack Sheehan, who was very heavily involved in the successful fight for the Employee Retirement Income Security Act of 1974, noted that at that time "we were trying to address retiree problems caused by the liquidation of companies," whereas "Now we are confronted by companies who use bankruptcy to reorganize, but, in the process, shed their pension liabilities."

Enactment of ERISA established the Pension Benefit Guaranty Corporation, the agency now responsible for helping protect the retirement incomes of more than 38 million participants in some 112,000 private-sector defined benefit pension plans. But that law, in compromising the controversy over cost and coverage, requires the PBGC to guarantee only basic pension benefits.

While the PBGC covers in full the pensions of most USWA retirees, it does not fully cover, for many, the early pension benefits they were promised. The PBGC maximums set forth by law and its five-year phase-in rule result in pension cuts for some individuals. The agency's actuarial reductions because of the younger age of many retirees and, most importantly, the fact that it does not cover pension "supplements" are affecting thousands.

Such "supplements" were a crucial part of the USWA's and other unions' response to the wave of plant and department shutdowns that have wracked industrial America in recent years. But, through bankruptcy, companies are able to avoid these obligations.

The so-called "magic numbers" pensions—the 70/80 and rule-of-65 pensions negotiated by the union—allowed more senior workers to retire when their plants or departments shut down, with pension supplements that were to take the place of Social Security until they

Contents

FEBRUARY 1987

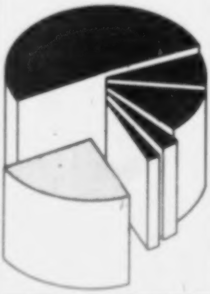
The fightback on pensions continues

Thousands rallied in Youngstown, and public hearings in Cleveland, Pittsburgh and Washington, D.C. brought attention to the termination of the benefits of LTV retirees, the largest pension liability action in history. See pages 5 and 20.

FIRST OF A SERIES

Broken promises: the pension crisis

This is a part of "the pie" that Steelworkers would rather not have: the massive underfunded pension plans assumed by the U.S. Pension Benefit Guaranty Corporation since 1977. All but 21 percent are of steel companies who have filed for bankruptcy. The first of a series examines this crisis and the response of the USWA, Congress and the PBGC. See pages 12-13-14.



Steelworkers win in the Bayou

After two and a half years of struggle, the USWA won both representation and a first agreement at one of the largest mini-mills in the deep South—at Bayou Steel in Louisiana. Hard work and a "hang tough" persistence by the union finally brought victory in the Bayou. See page 8.

'A historic year for Steel'

In 1986 the crisis of the American steel industry continued, but, through landmark advances in contracting out prohibitions, job security, profit-sharing and industrial democracy, the USWA marked a significant year for collective bargaining. Holdout USX completed the gains in January. See page 7.

'With dignity and jobs for all'

Virtually all of the nation's Catholic bishops have approved a major statement which calls for full employment to "make an economic democracy to match America's political democracy." The statement has been endorsed by counterpart religious groups of the Protestant and Jewish communities. See page 22.

MIDWEST EDITORIAL OFFICE: 720 W. Chicago Avenue (Room 204), East Chicago, Indiana 46312—Telephone: (219) 398-2051

USX 'idle facilities' action callous: USWA

PITTSBURGH, PA.

"...it is sheer duplicity for USX managers to now suggest that the workers or their union are to blame for the company's actions."

International President Lynn R. Williams accused USX Corp. of callous and unconscionable conduct in placing four facilities on indefinite idle status.

The company's action, which leaves 3,700 workers in limbo, was announced by USX Chairman David Roderick on Feb. 4, four days after USWA members approved a new four-year contract that ended a six-month lockout.

Roderick falsely claimed the union and the members had been warned that a work stoppage could lead to plant closings. And he punctuated his announcement by saying: "Now the economic hammer has dropped."

"What an insensitive and uncaring attitude toward people who have devoted their lives to this corporation," Williams said. "It's difficult to imagine that this development can make a very positive contribution to labor-management relationships at USX. I can hardly imagine getting off to a worse beginning.

"During the talks, the company told the union that all facilities operating before the lockout would resume operations on an orderly basis as work became available," Williams said. "This action flies in the face of assurances plant managers made in letters to workers on Dec. 29."

James N. McGeehan, international treasurer and chairman of the USX negotiating committee, added: "We negotiated a new contract with USX, but it seems we were not successful in changing the disposition of top management."

The facilities involved are the Geneva Works, Provo, Utah; the hot end and pipe mill at Baytown, Texas; the National Works plant in McKeesport, Pa.; and the Saxonburg sintering plant in Saxonburg, Pa.

The announcement came despite the company's repeated assurances during negotiations that all facilities would reopen on an orderly basis. The same representation was made to Williams by Roderick in a telephone conversation on Feb. 2.

The union has demanded a meeting between the company and local union officers from the affected facilities. As of **Steelabor**'s press time, there had been no response.

In letters to the negotiating committee and members at the four plants, the union's top negotiating committee pointed out that the company rejected an offer for a contract extension that would have kept workers on the job and permitted negotiations to continue.

The committee also noted that various Wall Street speculators trying to win control of the company had demanded that USX be "restructured" to increase the value of the company's stock.

". . . it is sheer duplicity for USX managers to now suggest that the workers or their union are to blame for the company's actions," the committee said. "If the economic circumstances of the steel industry justify idling these plants, they would have been idled anyway, and USX should say so.

"If pressures from Wall Street speculators have forced Roderick to idle these plants, he should place the blame where it belongs—on the speculators, not the victims."

McGeehan said the union would attempt to persuade the company to reopen the plants, while policing the contract to make sure none of the work of those facilities is being contracted out.

In addition, McGeehan said, "If the union finds that the plants are permanently closed and shutdown benefits should be provided, the international will join with the local unions in enforcing the members' rights to such benefits."

Local 2701 members at USX Geneva Works (left) in Orem, Utah, returned to work after six-month lockout only to learn their plant is on indefinite idle. USX announced it would idle this and three other mills involving 3,700 workers just days after USWA members ratified a back-to-work agreement.

Implementing the steel contracts

DAWSON, PA.

USWA staff representatives servicing basic steel locals of the five major producers who signed agreements with the USWA in 1986 and USX Corp., which settled in January, will meet here for an intensive five-day contract implementation seminar on March 2-6.

President Lynn Williams will stress the enforcement of the agreements, with emphasis on the prohibition of contracting out and use of the grievence procedure, in his opening remarks. Assistant to the President Sam Camens will coordinate the sessions, which will cover language on safety and health, grievence and arbitration and the specific contracting out procedures.

Staff representatives serving USWA locals in a dozen states with agreements with USX, Bethlehem Steel, LTV Steel, Inland Steel, National Steel and Armco Steel will be at the seminar. Announcements will be made soon for a series of seminars in the near future for local union presidents and grievance committee persons from those same companies, Camens added. ☐

Phone (412) 562-2400

United Steelworkers of America
AFL-CIO-CLC

FIVE GATEWAY CENTER, PITTSBURGH, PA 15222

April 16, 1987

The Honorable Paul Simon
United States Senate
Washington, D.C. 20510

Dear Senator Simon:

Enclosed is a copy of my response to Bruce Johnston, USX, relative to his comments on S. 538.

Sincerely,

Leon Lynch, Vice President
Human Affairs, USWA

Enclosure
CC: Senator Howard Metzenbaum

Phone (412) 562-2400

United Steelworkers of America
AFL-CIO-CLC

FIVE GATEWAY CENTER, PITTSBURGH, PA 15222

April 13, 1987

Mr. J. Bruce Johnston, Exec. Vice Pres.
Employee Relations
USX Corporation
600 Grant Street
Pittsburgh, PA 15230

Dear Bruce:

I am enclosing with this letter a number of comments relative to your observations on S. 538. I recognize that while you did testify in behalf of the National Association of Manufacturers, your observations might reflect the experiences of a major employer. In fact, I assumed the application of a notification provision in industrial facilities like steel was our joint assignment and one which would be most helpful to the Senate committee.

In general, I agree with your introductory paragraph concerning the purpose of the notification; namely, to provide adequate notice for readjustment assistance. A key factor in the adjustment process is early notification of layoff. It is important, therefore, that there is a proposal for mandatory notification in your comments, albeit at a level of terminations higher than is reasonable.

However, the bill does not limit the notice only to those situations involving permanent plant closures, but extends it to circumstances where the layoffs, in terms of duration, indicate the need for readjustment. It is useful, therefore, to affirm the need for prenotification where a permanent termination is planned and to distinguish cyclical layoff situations in which workers may not have a reasonable expectation of returning. In your testimony, you indicated there were 28 situations at five facilities where, under S. 538, notification would have been triggered. Perhaps if we could analyze those situations, we might be able to make some practical delineations. For instance, how many workers were laid off in each of the instances and how long did they experience unemployment?

It would be reasonable to exclude from notification those layoff events in which the employer had every expectation to recall the workers. If their situation changed during the layoff period, then the employer would notify them of the change in status so that they could enter a readjustment phase. In this situation, the notice would not be strictly a time-specific notification prior to unemployment, but would be a change in status while on layoff.

Sincerely,

Leon Lynch
Vice President
Human Affairs

USWA COMMENTS
on
Bruce Johnston's Observations

Introductory Paragraph

There are a number of policy points presented in this paragraph with which I would agree and would suggest that they could be incorporated into the legislation or the committee report:

(a) There is a wide diversity in economic activity which requires layoff flexibility. However, a mandated notification procedure need not restrict flexibility. The legislation already provides for a diversified notification schedule dependent upon the number of workers being laid off. Also, "unforeseeable business circumstances" may entirely void the obligation to give notice.
Comment: Perhaps further refinement could be pursued so that employment level fluctuations, due to temporary cyclical conditions, would not trigger a notification. The "unforeseeable circumstance" could also be subject to further legislative history description.

(b) Employer and employees could best handle specific conditions of an industry or a company. I certainly agree that the role of collective bargaining relative to a notification schedule can be utilized. However, there needs to be a statutory basis for embracing that role. We must give recognition to the fact that up to now whether with or without collective bargaining or employer-employee arrangements notification has not been adequate. That legislative assumption is based upon a number of government reports. The Office of Technology Assessment remarks:

> In general, the amount of notice individuals receive is short. . . Notice periods this brief do not allow enough time to prepare an effective program of adjustment assistance for the displaced workers. . . 30 percent of employers give no individual advance notice to blue-collar workers.

Comment: The legislation should recognize that a collective bargaining arrangement could develop specific flexibility based upon plant situations, but within the statutory framework.

(c) I recognize that one of the primary purposes for notification should be to provide for readjustment assistance. Our testimony dwelt exclusively on that purpose. If an employer is searching for alternatives to prevent closure, he will seek it with or without notification.

Comment: However, if there is an assumption that the notice might be designed to delay or prevent closure, the legislation should specifically assert the opposite.

1. Notice to employees

o Closure is the sole discretion of the company, subject to whatever collective bargaining arrangements which might exist or be negotiated. It should not be the intent of the legislation to provide otherwise.
Comment: Again, the legislative language could explicitly so state this intent.

o The 200 employees/30-day notification is far too exclusionary. Most workplaces would be exempted from the notification obligation. Even our own contracts are not so restrictive. According to the Bureau of Census, County Business Patterns, 1984, a 200-worker trigger would cover only some 0.6% of work establishments and exclude some 70.4% of workers. Actually, the exclusion would be even greater since the 200-worker trigger would be actual layoffs, and not just establishments employing over 200 workers.

Percent Distribution by Employment Size Class: 1984

	1-49	50-99	100-249	250-499	500-999	1000-5
% Establish.:	95.3	2.6	1.4	0.4	0.1	0.1
% Employment:	43.3	12.6	14.5	9.0	7.2	13.3

Comment: As expressed above, we should delineate between structural and cyclical layoffs and try to define more precisely those cyclical layoffs where the workers have no reasonable expectation to return. Making such a distinction--in terms of a mandatory framework--might involve too much subjective judgment. Hence, we may be able to list specific circumstances which would be excluded from the requirement: shift realignment, repair work, product changeover, etc. In this way, the subjective element could be minimized and yet certain types of layoffs would not require the notice, thereby relieving the firm of some of the obligation. I would be willing to work with you to develop such a listing of exclusions. I suppose your 200 terminations was a quantitative way of arriving at an exclusion formula. However, we should be able to develop a non-subjective qualitative measure to accomplish the same objective.

o Pre-notification layoffs and post-notification layoffs present practical situations which should be recognized in the legislation.

Comment: I would think that additional layoffs after notification was given would not present any particular problem since the earlier layoffs were preceded by a notice relative to that facility wherein there is the implication that the division is either being slated for total shutdown or laid off workers are not expected to return. However, if the previous notice was given for one department or facility, a new notification requirement would be triggered for layoffs for other departments or facilities.

o Notification should not be construed as a limitation on the company's business judgment.
Comment: Agreed.

o Diminution of the penalty.
Comment: Reduction of the penalty due to failure to notify should be subject to the contractual offsets; e.g. SUB, etc. Furthermore, percentage reduction could be pursued with the committee members to determine a reasonable amount.

o Exclusive remedy is the procedure contained in the Act.
Comment: Agreed.

2. Notification must be given to the government agencies at the same time it is given to the affected employees. The bill requires notification to be given to both a state and local governmental agency.
Comment: For the purpose of minimizing duplicate government filings, notification to the appropriate state agency seems reasonable. However, the local government should not be precluded from the subsequent actions preceding the introduction of appropriate readjustment measures. Actually, the legislation relies upon substate entities to implement the adjustment assistance and it is the local agencies which are more equipped to engage the situation. The first section of S. 538 enhances the PIC organization. Hence, the role of the local agencies cannot be ignored. However, for notification purposes, submission to the appropriate state agency should be sufficient.

3. "Affected employees" means those five-year employees separated as the result of permanent discontinuance of a plant or department.

Comment: The separation from work must include others than those affected by permanent closures as indicated above. The five-year attachment to the workforce requirement seems unnecessary. If a facility is being shut down or those employees associated with a facility have no reasonable likelihood of returning, it makes no difference as to whether they have been recently hired or not. Each of them should have the benefit of that terminal characteristic of their layoff. Furthermore, if affected employees are to be notifice as a group, then those with less than five-years' seniority should be included in the numerical trigger for notification.

4. State preemption.

Comment: Many states and municipalities have enacted various forms of notification provisions. Some localities invested public funds in the development of a local enterprise. It would, therefore, be unreasonable to exclude any laws which they enacted for their particular situations.

Additionally, since the federal law is designed to have a national application, certain of its provisions may be less comprehensive. Hence, the option should remain for local/state concerns to be met with area-specific legislation. Thus, for instance, a municipality or state which was instrumental in having a plant locate in its area may very well want both notification and consultation rights to determine whether the site could be converted to alternate uses.

5. Consultation is not mentioned specifically in your remarks. By inference, if the goal of notification is for adjustment purposes, then consultation, as described in the bill, would not be relevant. However, consultation for the purpose of adjustment is most appropriate. Under Section 1 of S. 538, employer-worker committees are encouraged. Hence, information relevant to the adjustment process and consultation consistent with that function should be recognized in the bill. USWA basic steel contracts also recognize the effectiveness of joint committees and provide for a contractual existence. The legislation should do no less.

Senator SIMON. Mr. Johnston.

Mr. JOHNSTON. Thank you, Senator. I have been dealing with the Steelworkers now for 30 years, and I want to tell you that this is a new experience to have that kind of brevity. [Laughter.]

The opportunity to testify about our concerns with the bill is very much appreciated, and the remarks that you and Senator Metzenbaum opened with, I think are encouraging, but being willing to accept knowledgeable and well-taken compromise, because I think there are some things in the bill that we could support with that kind of an approach, and particularly the provisions that are set out thus far with respect to retraining, with respect to counseling, educational deficiencies, job search assistance, and even notification, if it could be made more practicable and I think more responsive to the actual shop floor, to labor contract administration, and to the propensity for litigation that we will have if there are not changes made.

You have my statement. It is full and complete. In a couple of minutes, I would like to in conversational English tell you some of the deficiencies as we view them.

If Title II remains in the bill as is, I believe that the business community largely would have no choice except all-out opposition to I and III, and that would be too bad, because there are provisions in there that I think we could work with and that would be very helpful to employees who are caught up in structural change.

One of the things that the Brock Task Force had almost unanimous agreement on—and I am accompanied here by Mr. Jim Short, who is sitting here, who was a member of that Task Force and who is our Vice President for Benefits—one of the things they were unanimous on is that this is not essentially a big company problem. The major industries and major companies in that industry have either bargained to very extensive employee support programs in cases of plant closings, long-term layoffs, or other dislocations, and have equivalent programs in place for their non-union employees.

And yet the bill does not seem, particularly Title II, aimed at where there was agreement that most of the problem seems to be concentrated.

The next big concern we have with the bill is the fact that there is almost no distinction in terms of obligation between shutdown or plant closing versus layoff. In a highly cyclical industry, that would be a very, very unworkable provision.

There are in my company many business segments. We looked at the bill and measured it against the first six months of 1986 when we were operating. The second six months, we were down in our Steel Division because of a work stoppage.

The first six months of 1986 would have required us to make 28 of those notification-consultation negotiations while we were at the same time trying to reach a labor agreement with the United Steelworkers.

The customers in the steel business, in our chemical business, in our oil business, in our railroad business, in our oil well supply business, simply do not give us 30 or 90 or 180 days' notice in all circumstances. There are too many market forces, too many external forces, too many currency changes, price changes, competitive factors, for us to ever have that kind of sure knowledge with respect to layoffs, and simply because this could become legislation, that would not give us any way to protect ourselves against those kinds of notice requirements in which we would have to pay if there was a third party determination that our failure to give notice had not been reasonable.

The bill says in effect, pay and produce, even if you have no orders, where you are unable to demonstrate, probably with a burden of proof, that your actions in layoffs were unforeseeable.

We often have long-term layoffs in steel that do not involve plant closings. In the late Seventies and the early Eighties, our tubular plants, our oil country tubular plants were booming. When OPEC price arrangements collapsed, we did not have any 180 days' notice. Yet we think the steel markets will come back. We have to keep those plants on line. We are not prepared to give permanent shutdowns.

The bill has nonduplication provisions for Government benefits; it has no non-duplication for private benefits. It requires the transfer of private and competitive and entrepreneurial information to local government officials who would politicize the problem and who would delay closings, which we would have to subsidize.

I think that the total agenda before the Congress with respect to employee relations raises costs, will produce inflationary results, because this bill has to be considered with all the other things that are before the Congress. We are trying to lower costs to make our plants competitive. Layoffs in steel have not been caused by inadequate notification or support for employees. They have been caused because we are high-cost in a world which has become very, very competitive for those products.

We provide extensive benefits for our employees, and they would be duplicated by this bill and in practicable ways. I hope you are open to some extensive compromise to make this effective.

Senator Simon. Thank you, Mr. Johnston.

[The prepared statement Mr. Johnston, with attachments, follows:]

Testimony of

J. Bruce Johnston

Executive Vice President, USX Corporation

on

The Economic Dislocation and Worker Adjustment

Assistance Act of 1987, S. 538

before the

Subcommittees on Labor and

Employment and Productivity

Senate Committee on Labor and Human Resources

March 26, 1987

INTRODUCTION

Mr. Chairman and members of the Subcommittees, my name is J. Bruce Johnston. I am Executive Vice President, Employee Relations, for USX Corporation. In my capacity at USX, I have negotiated major labor contracts with large international unions for many years. I have served as Chairman of the Steel Companies Coordinating Committee for labor bargaining in the Nation's Steel Industry for many years. I have also served, not only as Chief Company Negotiator, but as Chief Industry Negotiator in collective bargaining for the Coal, Cement, Construction and Maritime industries at various times. I am responsible for collective bargaining, employee benefits, personnel, safety, industrial engineering, and labor contract administration at USX.

Thank you for this opportunity to participate in the Subcommittee's deliberations on the proposed legislation. As a competitor in the beleaguered domestic steel industry, USX has been forced to close many plants, to layoff, to pension, or to terminate thousands of employees - both management and non-management. Having grown up in the Monongahela Valley of Pennsylvania and worked as a blue collar employee in both steel and auto plants, I know the problems emanting from plant closings. Many of the people who lost jobs were and are my friends, some are my relatives, and I see many more of them in my business and community responsibilities. I have first-hand concern and understanding of the hardship side of economic change and new competitive conditions.

Title I of the Senate Bill contains some potentially useful assistance to employees who lose jobs permanently in which they have worked for many years. A number of features in the Senate Bill align with the kind of outplacement programs that USX and the United Steelworkers have conducted since 1984. Attached as an exhibit is a description of our program which identifies the number of employees participating, and the financial support provided by USX and JTPA funding.

Much of the thrust of Title I is laudable. To endorse it, however, major problems need to be addressed.

* It seems top heavy -- creating more bureaucracies at the Federal and State levels which will siphon funding that could be far better used to assist dislocated workers. Surely existing agencies and staff could administer this program without creating a new cost burden for the Federal deficit.

* Additional Bureaucracy will inevitably accelerate still more reporting requirements, requests for data and statistical analysis thereby increasing costs to manufacturing companies now trying to remain competititve by reducing costs.

* How will income maintenance or support services such as child care, commuting money, and supplemental income provisions be effectively dispersed, responsibly controlled and spent as intended to encourage early participation by displaced workers -- a vital element in successful reemployment programs? Who will audit? Will we have another C.E.T.A. disaster?

* Will the establishment of basic education and literacy programs for these people contribute to absolving the public education system in this country from its failure to provide basic skills to broad segments of our student population?

* The proposal that local Worker Adjustment Committees include government members and a non-affiliated chairman takes the accountability away from the two basic participants and the ones with all the investment at risk -- employer and employee. We see much potential for abuse in an outside chairman. Government should be a resource available to employers and employees when requested -- not a dominant player with all the potential for politicizing the process.

Title III offers more indirect and less identifiable prospects for successful use by dislocated workers. However, we are supportive of reasonable efforts to help displaced people obtain or create employment. The loan program should help in some specific cases although it does not seem to offer widespread potential. We should strongly support individuals willing to help finance their own future. The self-employment demonstration program may deserve a try. Individuals willing to invest their own money and effort to help secure future employment are worthy of some support. We do not support the Public Works projects as an approach to creating jobs. Projects should have an economic justification independent of make-work. It would be difficult to assume that such groups would not simply displace other private sector workers.

Administration Bill S. 539 provides for services to relatively the same groups of people and specifies similar support. The basic tenets of the Administration Worker Readjustment Act are in keeping with USX experience and practice regarding dislocated workers. This Bill contains provisions to effect successful intervention in structural economic change and resultant worker dislocation. We prefer the following features of the Administration Bill:

- Emphasis on reemployment -- not income support

- Absence of additional administrative bureaucracies

- Setting performance goals, including placement rates

- Requirement that training be in skills or occupations for which there is a demand

- Non-duplication of services and programs

- Funding available for industry specific allocations and multistate programs

We have, however, the same reservation about the make-up of its worker adjustment committees as earlier described.

Identifying dislocated workers will be far more difficult than implied by descriptions included in Title I. Legal definitions such as: "unlikely to return to his or her previous industry or occupation," "limited opportunities for employment or reemployment in the same or a similar occupation," "a full-time homemaker for a substantial number of years and..." will offer a vast range of interpretations and almost unlimited program expansion. If these terms are interpreted to encompass the hard-core unemployed, moreover, many of whom do not possess employable skills, the future financing requirements for this Bill could be staggering.

We suggest that the Administration's Bill offers a more responsible base upon which to build Title I dislocated worker eligibility and services.

We could support Titles I and III with the reservations described above.

We strongly oppose Title II.

We believe that Titles I and III properly revised could function effectively standing alone. If the proponents of the Senate and House Bills on worker dislocation insist on retention of Title II, the business community will have no choice except to wage an all out fight against the total Bill. That would be unfortunate in view of the considerable potential of Titles I and III. The real losers will be American workers who need constructive retraining and support assistance to lessen the impact of closings and layoffs, not guarantees against inevitable and essential structural changes in our economy.

Title II places notice and consultation requirements on employers which do not recognize the real world of the Shop Floor, the Labor Contract or the Court House. The best way to understand the problems of Title II for the business community is to review its impact on a Company.

THE USX EXPERIENCE

A basic responsibility for any manufacturing company in any industry is the establishment of plants, technologies and products, their growth and nurture, and in some cases, inevitably their termination. A company or an industry that does not effectively manage this process will inevitably recede and fail all of its responsibilities to all of its constituents. This process may take years or decades. Replacement or renewal may be economically feasible at some locations, but not at others, with both new capital and new technology, with retrained employees and with limited disruption to a community. Conversely, restructuring may inevitably involve withdrawal -- requiring relocation, downsizing or product abandonment in response to changed markets or to new products, to raw materials sourcing, to environmental conditions, and to other changed economic and political factors. The causes, the responses, and the effects on employees, communities, managements, companies and the nation are so diverse that it is impossible to legislatively anticipate all these impacts, let alone insulate each employee group and their supporting organizations from the ebb and flow of change, without damaging their economic prospects and outcomes in far worse ways.

USX has experienced more than its share of downsizing and reshaping in recent years. The steel industry particularly has had to fight for competitive survival via closings, merging or discontinuing plant producing units, raw materials sites, and the like over its entire history. At the same time, it also survived by constructing new steel plants, new harbors, new ships, building new technologies, research labs, developing new equipment, and opening new coal, ore, limestone, zinc, manganese and similar facilities. To give you some sense of the magnitude of these plant closings, attached is a copy of USS Today, a magazine distributed to USX employees in advance of bargaining with the United Steelworkers of America in mid-1986. I direct your attention to page 6 which lists facilities closed just since 1980. Many more plants were closed in the 1960's and 1970's. See our USS News, July, 1982, pages 18 through 22, also attached as an Appendix.

During these same time periods, major modernizations were made within existing steel plants. Large integrated plants were also built, such as our Texas Works. USX spent $4.6 billion on steel plant construction during the period 1976 through 1986. Page 24 of the USS Today lists some recent major facility modernizations conducted by USX. Thus, like most successful and large employers, USX has opened and clsoed many plants and producing units, as a basic requisite of competitive product, plant and technology requirements. Closings are expensive, many times traumatic to employees and always to investors. They are disruptive to suppliers and to customers, and closings do impact plant communities. But plant closings are as much a part of maintaining a competitive company and a competitive national economy as are plant openings, new products and new technologies. To say the obvious, we experience and have learned some things about plant shutdowns and employment terminations.

The steel industry devotes a major portion of its Collective Bargaining Agreements to employee security programs designed to deal with both short and long-term layoffs, and with plant closings. Steel plants make molten steel tailored to thousands of precise recipes for its many and varied uses by our customers. Infinite varieties of molten steel are engineered to meet ultimate end point chemistries required to furnish steel products to the specific characteristics of customer orders. We can draw steel finer than a human hair, or make it into armor plate for a super carrier. We can make it light, rigid, formable, drawable, machinable, stainless, rust-bonded, bendable or impregnable. We can use it to carry millions of tons of traffic across huge bridges or for tiny instrumentation on a space vehicle's most exquisite technology. Steel can be alloyed or pure, it can be feather-light in a beverage can or it can form the strength of skyscrapers, superdomes, and Army tanks. But, until a customer order is in hand, a steel production cycle cannot start.

Consequently, a steel plant and particularly its individual rolling mills, finishing operations, and myriad supporting activities are operated to meet erratic and diverse customer order patterns and surges. This is not by our choice! Production of meticulous customer specs in exact chemistries, with precise metallurgicl qualities, and market driven rolling, finishing, and packaging specifications mandate work scheduling to meet that uniquely positioned player in free societies market economies -- the customer. It is tough on us — but it's great for consumers. Steel plant employees are consequently "scheduled" to work.

Companies do not schedule layoffs. Each week, a work schedule is posted for the next week's work. If not scheduled to work, an employee is on layoff until next scheduled to work. This pattern usually results in years of uninterrupted work but it can also mean weeks or sometimes months of layoff, depending on market demand in that employee's particular work area or product area, and on that employee's labor-contract seniority right to such work, negotiated under the labor laws adopted by the Congress.

Thus, steel markets, competition, customers, and union contracts control labor scheduling in the steel industry and they explain an extensive layoff benefit scheme, better known as the "Supplemental Unemployment Benefit Program" (SUB), which operates as an adjunct to state unemployment compensation systems.

An employee having at least two (2) years job service is provided with a SUB which gives him 26 hours of pay eligibility for each week of layoff eligibility, all on top of state unemployment compensation. An employee earns one week of SUB coverage for each two weeks of work and can accumulate a bank of 52 credit units which would cover up to a full year of layoff. If an employee has 20 years or more of service, he can increase his bank account to two (2) years of credit units.

Those employees with less than 20 years service are paid at benefit levels which depend on the financial status of the SUB Plan. The Company contributes an agreed upon sum of money per hour worked into the SUB Plan. The financial status of the plan is determined by the ratio of hours worked by the total employee group covered, versus the number of laid off employees drawing benefits. Employees who have 20 years or more of service, moreover, are guaranteed their weekly cash benefit at 100% from general corporate funds regardless of the financial status of the plan. The SUB Plan is designed to provide a generous earnings replacement when an employee is not scheduled to work. By the way, our employees continue to accrue pension service and to receive company paid insurance coverage for medical, dental, vision and death for the full period of SUB covered layoff which can last as long as two (2) years.

If a layoff becomes prolonged, reaching two (2) years since last day worked, a longer service employee will automatically become eligible for immediate pension. Employees with age plus service equal to 80, and age 55 or older employees with at least 15 years of service, or employees with 20 years of service and a combination age plus service equal to 65, all become eligible for early retirement pensions. An early retirement pension under these eligibility rules provides an actuarially unreduced pension, regardless of age, plus an extra $400 per month on top of his regular pension until age 62. In addition, employees in retirement receive retiree medical benefits for themselves and for their eligible dependents plus retiree life insurance, for the rest of their lives.

As part of this same employment security program, steel companies provide a formal program for laid-off employees who wish to transfer to other plants within the company, payment of a relocation allowance, job search help, and out-placement counseling.

The steel industry Employment and Income Security Program is so attractive that many older, long service employees at many locations have preferred to take these shutdown benefits rather than accept work rule changes or wage reductions to keep their plants labor-cost competitive to provide on-going operations.

Page 27 of USS Today highlights a 1986 Carnegie-Mellon University analysis of the steel industry employment security program and its enormous financial cost. Attached also is an analysis by Harvard Business School Professor, William E. Fruhan, Jr., which describes how:

> "Exit Barriers and High Labor Costs First Squeeze and Then Strangle Mature Business Once the Economic Fairy Tale Ends..." in highly unionized industries where collective bargaining, over decades, has produced very high employee termination costs.

As revealed by Professor Fruhan, shutdown benefits have become so costly that most such companies cannot afford to close even losing operations prior to Chapter 11 filing and/or PBGC pension takeover. Professor Fruhan's study also confirmed that the higher the exit costs in high wage industries, the more likely that their associated labor rates will also far exceed general labor costs in the nation. These same rich shutdown benefits also pull against worker mobility and discourage retraining. A laid off steelworker receiving full SUB and state unemployment benefits receives more income dollars each week than the average manufacturing employee in our country makes while working full time. A laid off steel or auto worker is unlikely to seek market-rate work while such benefits are available for not working.

The steel labor contract also includes a 90-day notice provision which provides that:

> "Before the Company shall finally decide to close permanently a plant or discontinue permanently a department of a plant, it shall give the Union, when practicable, advance written notification of its intention. Such notification shall be given 90 days prior to the proposed closure date, and the Company will thereafter meet with appropriate Union representatives in order to provide them with an opportunity to discuss the Company's proposed course of action and to provide information to the Company and to suggest alternative course. Upon conclusion of such meetings, which in no event shall be less than 30 days prior to the proposed closure or partial closure date, the

> Company shall advise the Union of its final decision. The final closure decision shall be the exclusive function of the Company. This notification provision shall not be interpreted to offset the Company's right to lay off or in any way reduce or increase the working force in accordance with its presently existing rights as set forth in Section 3 of this Agreement."

After a final decision is made by the Company to close a facility, the labor contract provides additional benefits to laid off employees:

> "...in the event of the permanent shutdown of a plant, Company and International union representatives shall meet to determine whether appropriate Federal, State or local government funds are available to establish an employee training, counseling, and placement assistance program for that facility. If such funds are available, the Company and Union shall work jointly to secure such funds to establish a program to provide: alternative job training for affected employees for job opportunities primarily within the Steel Industry; counseling for affected employees on available benefit programs and job opportunities within the Company and the area; and job search counseling."

Clearly, the steel industry and the United Steelworkers of America have negotiated an extensive and expensive employment security program, early notification of pending shutdowns, and cooperative aid to employees seeking new employment.

However, even this expensive and comprehensive program is not as extreme or burdensome in many respects as that now proposed in the legislation under discussion here.

There are a number of critical issues in the proposed legislation that could be fatally burdensome to a steel company, and which are pragmatically unworkable given the market patterns of steel ordering and manufacturing. The size of a steel plant, the number of producing units within a plant dedicated to specialized product ranges, and the extensive variety of steel finishing units can cause normal weekly employment levels at plants to fluctuate many times higher than the 50, 100, 500 people prescribed in this legislation. During the first six months of 1986, for example, and prior to the layoffs resulting from contract negotiations, the five largest plants of USX would have been required under this legislation to develop and meet these legislated "notification" burdens 28 different times on the basis that a so-called "mass layoff" had taken place. Three of those notices would have been for layoff of over 200 people.

It is impossible to know or predict at the time an employee is first not required or scheduled at work, when he will be recalled or return to work. Steel companies already pay a significant level of income to that individual while he is laid off.

Steel layoffs, even when prolonged, do not typically constitute plant closures nor do they constitute permanent termination of employment. Almost every one of the people we so notified of layoff during the first six months last year was back to work well before July, 1986. But we had no way of knowing that in advance when they were laid off. Even the steel labor contract, negotiated with a very powerful and knowledgeable union, does not require such de-jure notifications unless and until a plant is to be closed permanently.

Before a manufacturing plant is considered permanently shutdown and notice of pending shutdown is given, that plant typically would have had very limited or even no production in it for many preceding months or even years. The steel market is highly cyclical with long periods of either high or low demand for particular product lines. Our domestic oil and gas customers, for example, have stopped almost all new drilling in the last two years. Consequently, we are currently selling them almost no drill pipe or casing or oil-field pumps. Yet my company is certain that drilling will resume, and heavily, some time in the future.

In the late seventies, line pipe and oil country tubulars boomed for steel. How could a steel company possibly afford to write off the enormously costly steel manufacturing facilities which produce these oil country products and/or bear the shutdown costs to the affected employees, and then rebuild duplicate facilities, and hire and train a new labor force when the tubular market comes alive again, and also incur another potential liability for future shutdown benefits for the new work force when the next market turndown occurs?

Notification benefits simply tied to legally defined employment fluctuation is not sustainable in any large industry, much less those where employment is so market-driven. The uneven nature of steel employment cannot be converted legislatively into a new tier of termination benefits without doing incalculable harm to those obligated to finance the benefits.

In cases where an employer has not been able to provide the required notice, it would be deliberately punitive and resource-wasting to require full payments to employees who perform no services and produce no product. Even very powerful unions like the Steelworkers and United Autoworkers demand only partial payment from employers for such layoff periods. But these existing and generous levels of payment would now be raised to new cost levels by the requirements of this proposed legislation. Our product cost, already carrying the highest wage rates in the world would thus be made less competitive.

The proposed legislation would cover employees with as little as six (6) months job service. That's unbelievable! A brand new employee with such a short period of work and with maximum social and labor mobility has surely not earned job benefit commitments from his plant or employer, after having invested so little time in the enterprise. Our experience in steel is that a substantial percentage of these short-service employees would leave our company within three to five years. Even a union with the leverage of the Steelworkers has not seriously pursued SUBs for short-term layoffs for employees with as little as two (2) years service or less. Even a steelworker currently must have at least three (3) years service to qualify for severance allowance.

The proposed legislative requirement that employers provide information to, and consult with, employee representatives before acting on a closing or layoff is an open-ended obligation, broadly defined and therefore a guaranteed opportunity to exploit, litigate and endlessly delay a proposed closure. If an employer is also forced to continue paying employees during these "consultation" periods, employee representatives will find unlimited ways to claim inadequate information, to argue unwillingness on the part of the employer to consider alternate proposals, and to find infinite schemes to institute delaying litigation. Only someone who has never been out where the rubber meets the road in labor contract administration would not know that. All the incentive for affected employees and particularly their union representatives under this bill will be to delay agreement and thus prolong full pay for a plant that has no work for them.

This legislation, as proposed, requires employers to consult for the purpose of "agreeing" to a mutually satisfactory alternative or a modification of the proposed layoff or closing. How can people be mandated by legislation to "agree," -- particularly when under that legislation, disagreement will be subsidized for one party by the other? What is the effect of agreements to agree? Our experience in a great number of shutdowns suggests the futility of such a requirement. In only two cases in recent years, after consultation with the Steelworkers, have we decided to continue operations originally scheduled for suspension. Each of them continued thereafter to incur heavy financial losses and subsequently were shut down.

The structure of the proposed legislation would open the door to extended litigation over challenges of a company's willingness to bargain concerning alternatives or modifications. Because shutdowns are painful financially to a company, quite apart from their obvious impact on employees and communities, extensive research and evaluation of alternatives always precedes and is greatly preferred by any company to the financial and organizational costs of shutdown. It is highly remote that another legislatively mandated round of consultations will somehow develop an acceptable alternative after exhaustive attempts have already proved unavailing.

As often as not high employment costs are a major contributor to shutdowns. Is a local union which refuses to moderate them to avoid shutdown now going to forego contract termination benefits for its members merely becasuse of a new legislatively imposed delay? Will employees do so particularly when continued impasse means continued subsidy? To ask the question is to answer it. This requirement appears to be primarily a device to retard the shutdown process to the great economic disadvantage of the enterprise and ultimately to the jobs of all the others who depend on that enterprise.

The requirements to include local government in the information disclosure and consultation is another invitation to multiplied conflict and extended delay. Every community and its local government representatives are temporarily disadvantaged when a company expresses an intention to close a plant. Local government officials, typically, will not be a neutral or balanced voice in this temporary period of conflict between the company and plant employees. These officials will react in the same manner as employees, that is, seek to retain revenues, from the company as long as possible. No one gives up their income without a fight. Government should obviously make its structural services available to a plant and its local employees in these matters, but it should not be empowered to act as a legislatively established participant in plant closure decision-making. Company and employee representatives are the prime parties affected and should be free to consult government, seek government guidance and support services as they see useful. Government should be available to assist employees if a shutdown decision is finalized. Any other behavior for government is likely to chill further investment in that community, and further handicap its competitive manufacturing climate.

A requirement to publicly declare a plant shutdown from 90 to 180 days in advance of the closure, is not without significant risk. Customers do not have to provide 90, let alone 180 days notice of order cancellation or of changing suppliers or of simply cutting their order volumes or their price offerings. When any shutdown announcement is so made, customers will immediately seek new sources of supply and cease ordering any items that require substantial lead time. Suppliers will tighten credit terms for shipments to that plant, lenders may downgrade the company's credit rating if that plant is a major part of the company's producing facilities, and the market value of the company's stock will likely decline. Shutdown pressures or pinch-points in the life of a business are often successfully surmounted, but if public announcement is required months in advance, the announcement itself can easily become a self-fulfilling prophecy. Six months may make a competitive difference to a company attempting to fend off tough competition. The notice requirement itself could be a large advantage to that competition.

We note that the Report of the Brock Task Force on Economic Adjustment and Worker Dislocation argues that there is no evidence that productivity declines during a period of shutdown notice. That seems doubtful to us based on our experience. I question whether any comany, so affected, has a reliable measure of productivity for a measurement period that short at a plant which is closing its operations. When closing comes, in-process inventories are being drawn down, equipment is not maintained, supplies are not restocked, and so forth, all of which can give a statistical appearance of productivity gain on superficial inquiry or unsophisticated measurement. Anyone who has managed large groups of workers knows first hand that uncertainty immediately hurts productivity as workers react to these changes, contemplate their future, vent their frustration, lose concentration, and devalue company loyalty. Injury risk tends to increase. Product errors increase. Claims that productivity will improve or even hold steady in these situations are highly suspect. And, I say that based on a lot of shutdown experience in many areas of our diverse business segments.

The customer, the banker, the investor, and our competitors, however, all have reactions far more important than productivity measurement when orders decline and a plant struggles to maintain competitive production costs against mandated shutdown notice long in advance of a proposed actual closing.

It is not insignificant that some of the largest unions demanding government protection from imports are also leaders in this effort to require mandated notification of plant shutdown and layoffs, as well as new economic transfer payment in the bills under consideration. These largest, most powerful unions in this country have negotiated very high-cost employment security programs for idle employees or idled facilities. Employees represented by these large unions have employment costs far above the all manufacturing average in this country and are among the elite labor groups in the world. If large unions can now expand their benefits still further through legislation as proposed here, then they can concentrate all of their collective bargaining muscle on ever higher wage demands and with the knowledge that the Congress will provide the rest of their benefit package.

Collective bargaining involves resource-allocation and if employees want to use more of their share of wage income as shutdown benefits, they may bargain to do so. No prioritizing by employees or their unions is required, however, if the Congress orders additional benefits for them by means of legislation. Who will provide the funds for these legislative benefits if wages are not offset to pay for them? Will the government next say "Pay More!" --in a dozen different benefit areas--not just one? More companies and more industries will become less competitive economically, as is the case today in steel and auto, if Congress orders additional benefits without wage offsets. Is this the right direction for our economy--to legislate higher employment costs and then force the transfer of that cost over onto consumers via restraints on imports? Can we cut off overseas auto, steel and telecommunications and other product competition while Congress legislates higher costs onto domestic producers of those products? Will consumers accept that? Can Congress guarantee the trade protection side of the equation needed to support this proposed cost side? It surely has not been willing or able to do so thus far, despite massive bankruptcies in Steel.

The Brock Task Force indicated that most large companies already provide early notice of impending plant shutdowns and then also provide a wide range of economic protection for their affected employees. Certainly that is the case in steel, auto, aerospace, aluminum, chemicals, oil, and many others. The writers of the proposed legislation were quick to lift out only those sections of the Brock Task Force Report that fit their objectives--they chose to ignore the central issue as to the nature of the problem they wish to address, i.e., the Task Force spent considerable time and found substantial disagreement as to the nature and magnitude of the unemployment problem caused by plant shutdowns, but there was little or no disagreement that the problem was not one of large businesses.

It is obvious, however, that this legislation is aimed at improving the lot of big unions by further cost-handicapping large basic industry employers. Further, we do not believe that the advance notice and consultation requirements are necessary, desirable, reasonable or workable for any business regardless of its size. Can this country afford to further increase production costs for beleaguered basic industries now closing their high cost plants as customers order elsewhere? Will making our costs still higher support long-term employment prospects?

Do we need controversial legislation which increases cost and helps hasten plant closings, or do we need legislation which helps people to build, and maintain and invest in plant openings? -- Do we need more expensive plant funerals or more healing cost medicine for imperiled manufacturing in our high-cost society?

This legislation is simplintically conceived even if good-hearted in its intention. We believe there are considerable values in Title I of S. 538, but we believe Title II, advance notice and consultation, for the reasons stated, and for those corroborated in the addenda, should be eliminated entirely.

CONCLUSIONS

I have tried to share with the Subcommittees our experiences at USX, a large diversified corporation, where plant closures and layoffs are handled pursuant to collectively bargained or equivalent employment-security programs.

From the perspective of the business community, each plant closing and each layoff situation is unique. Inflexible, legislatively imposed mandatory notice and consultation requirements cannot be realistically met in many cases. Companies signatory to Labor Agreements comply with its terms, provide collectively bargained notice periods and extensive economic shutdown benefits. Smaller firms, just as much as their larger counterparts, cannot predict their economic outlook months in advance. Large and small manufacturers, whether union or non-union, are each subject to countless shifts in employment as part of countless swings in business cycles, products and ever-changing external factors. Manufacturers work only when there are orders to fill.

Plants open and close and workers are recalled and laid off for many reasons. They include product and plant obsolescence, domestic and foreign competition, changing technologies and consumer preferences, increased costs, sales, mergers and acquisitions, divestiture, currency exchange fluctuations, deregulation, regulation, the loss of a customer or supplier, and endless others.

These are a sampling of the requirements of the marketplace and the global environment in which U.S. manufacturers and other businesses must compete. Remember that the United States has recently experienced a prolonged economic expansion, and continues to generate jobs at a rate envied by economies throughout the developed world.

The most effective way to meet inevitable structural change dislocation is through job creation, improved competitiveness, lower costs, better quality and preparation for change through worker training and skills development. We believe that the notice and consultation provisions of S. 538 are unnecessary, harmful, and unworkable in the manufacturing setting, and should be rejected by the Subcommittees and the Congress. We support the general provisions of Titles I and III, but believe that S. 539 is a better development base for worker eligibility and attendant supporting services.

USX

April 7, 1987

The Honorable
Paul Simon
Chairman, Subcommittee on
 Employment and Productivity
United States Senate
Washington, D.C. 20510-6300

Dear Senator Simon:

Thank you for the opportunity you gave me to testify before your Subcommittee on March 26, 1987. Your personal courtesy and professional conduct makes for a more useful dialogue and a hearing atmosphere which aids the cause of better legislation.

I'm not optimistic about reaching a consensus with the Steelworkers because of the fact that those who receive benefits and those who pay the bill have such different economic and/or political objectives. Nevertheless, I have sent the attached comments to Leon Lynch, as representative, of what we believe should compose the totality of Title II.

I hope you and your staff will take time to study the written submission which I made on behalf of just one company. Our diversity of products, competitors, customers, employee groupings, unions, and other factors illustrate why a top-down legislative imposition could wreak havoc in this area. Multiply that by a million other diverse companies, and I think you will see why the business community is understandably opposed to new costs, new litigation tests, and a new federal bureaucracy -- even though the objective be well-intentioned and laudable.

Most large companies pay enormous amounts to support displaced employees. Employment prospects will not be enhanced by adding another layer of costs.

Very truly yours,

Bruce Johnston

J. Bruce Johnston

Attachment

PLANT CLOSING LEGISLATION
ADVANCE NOTICE REQUIREMENTS

The wide diversity of business endeavor, organization, operating conditions, employment arrangements, contractual agreements, customer relations, financial circumstances, and the like, preclude on a pragmatic and competitive basis, legislatively mandated and arbitrary advance notice periods. This circumstance is best handled between employer and employees where the specific conditions of an industry, a company, a product or the employees involved are automatically considered. The purpose of advance notice to employees being terminated from long-term employment due to plant closing as recommended here is to provide adequate notice for readjustment assistance, not to delay or prevent the closing of an uneconomic plant.

1. Notice to employees.
   - Permanently closing a plant or discontinuing permanently a department of a plant and termination of employment of affected individuals, absent a Company personnel policy or labor contract stating otherwise, shall remain the sole discretion of the Company.
   - Before a Company closes permanently a plant or discontinues permanently a department of a plant causing terminations of 200 or more employees, it shall give the affected employees (as a group), whenever practicable, advance written notification of at least 30 days prior to the scheduled closure date.
   - The fact that some employees have been laid off prior to the date that notice is given, or the fact that some employees are laid off during the notification period in connection with the gradual shutdown of the plant or department, shall not, in itself, constitute a violation of the notice requirement.
   - Such notification shall not be construed as a limitation on a Company's business judgment to reduce or increase the work force.
   - If it is determined that an employer did not give such advance written notification even though it was practicable to do so, and if the Company's personnel policy or labor contract does not specify a greater economic remedy, the maximum award payable to an affected employee is 50% of his average weekly earnings as calculated over the 12 months preceding his last day worked, for a period not to exceed 30 days less the number of days notice actually given.

     Any such award shall be reduced for any layoff, severance, Special Pension, or absence benefits provided by the Company or by a government agency or entity covering the same event or time period.

This procedure is the exclusive remedy for violations of this Act.

2. The Company will provide notice of permanent closings to a designated agency in State Government at the same time as it is given to affected employees.

3. "Affected employees" means employees who have been employed by their current employer for five or more years whose employment is terminated because of permanent discontinuance of a plant or a department.

4. The provisions of this Act shall supersede any and all State laws insofar as they may now or hereafter relate to plant closings. (For purposes of this provision, the term State law shall be as defined in Act Section 514 of ERISA.)

4/7/87

History of USS/USWA Outplacement
1984 - 1987

In March, 1984, U. S. Steel and the USWA International met to discuss and study the feasibility of offering outplacement services to employees affected by announced plant shutdowns. A decision was mutually reached that outplacement services were needed and governmental funding should be pursued.

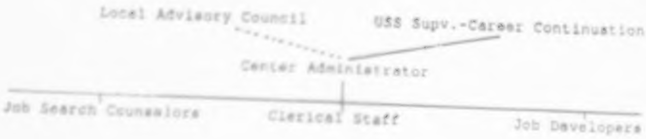
The first outplacement center, located in the Mon Valley, was opened June 1, 1984. This was closely followed by the opening of centers in Gary, Indiana and Lorain/Cuyahoga, Ohio. Additional centers located at Fairless, Geneva, Ambridge, and South were opened in the Fall, 1984. All eight centers offered comprehensive outplacement services to clients.

Day-to-day funding for center operations and job search training and support was provided by the Company. This included both cash contributions and in-kind services. Since June, 1984, the Company has provided $1,882,172 in cash and $1,879,103 in in-kind services. Cash contributions covered staff, supplies, equipment rental, subscriptions and information resources, and printing and postage. In-kind services included facilities, equipment, telephone services, administrative personnel, utilities (heat, light, air conditioning, etc.), and facility maintenance.

In addition, the Company secured the services of outside contractors to provide job search skills training. The company received and reviewed proposals and presentations from leading outplacement firms across the nation. Contracts were awarded to Drake, Beam, Morin, Inc. and Mainstream Access, Inc. based on quality of material, facilitators and price. These two outplacement firms have been used as service providers throughout the entire program. Since the inception of the program, the center staff members have developed a job search skills workshop and corresponding training materials designed to meet the specific needs of former USS employees. These materials have been used since October, 1984 in the Mon Valley, Gary and South centers and continue to provide an economical means of training clients in job search methodology.

The Company and the Union jointly sought JTPA funding for retraining purposes. Funds received through JTPA supported on-the-job training, skills enhancement, and classroom training. JTPA grants were awarded in New Jersey, Pennsylvania, Ohio, Indiana, Illinois and Utah. To date, the program has received $3,073,424 in government grants.

The program model, developed by Company staff, consisted of the following structure:



The Center Administrator directly reports to the Supervisor-Career Continuation, USS and receives advice and support from the Local Advisory Council. The Local Advisory Council consisted of six representatives, three from the Company and three from the Union.

Through February, 1987, there have been 6,915 clients served by the outplacement centers (includes management). All clients have participated in job search skills workshops, 711 have been enrolled in retraining programs and 102 in on-the-job training programs. Total job placement is 53% of the client population.

As the user population in each area diminished, the outplacement center closed. Several centers closed in 1985 including Geneva, South, Fairless, Ambridge, and Lorain/Cuyahoga. The center in South was re-opened in 1986 for a six-month period. At the present time, two full-service centers remain open in Mon Valley and Gary and retraining support is provided for South Works' clients enrolled in retraining programs. Where centers have been closed, the responsibility for ongoing assistance for any remaining clients (job postings, resume rewrites, counseling, etc.) has been transferred to the local Personnel office.

March 12, 1987

USS OUTPLACEMENT AND JTPA RETRAINING REPORT

		NUMBER OF CLIENTS					TOTAL USS (83 - 86)		TOTAL JTPA	
LOCATION	TOTAL	1987 (2/20)	1986	1985	1984	83/84	FAC & IN KIND	CASH	1986 / 1987	1984 / 1985
FAIRLESS	112			112			112500	33429		56000
FAIRFIELD	9									
GARY	1803	40	216	1347			527147	210335	112150	590000
GENEVA	392				392		38225	28519		170000
LORAIN / CUY	558			558			210748	80523		380000
MON VALLEY	3233	60	388	2785			707357	796708	87274	1445000
PIT CAL *	45				45		28734	11211		
SOUTH	567		182		385		221944	239273	145000	160000
TEXAS *	38				38		32450	9945		
USS HDQRTS. **	1958	10	357			1589		998435		
TOTAL	8915	110	1143	4802	860	1589	1879103	2408378	344424	2729000

*Mngt Only
** 1983,1986 ONLY
'84, '85 with
Mon Valley

Management, labor, and the golden goose

How exit barriers and high labor costs squeeze and then strangle mature businesses once the economic fairy tale ends

William E. Fruhan, Jr.

What is the source of the problems of mature industries in the United States? Some say foreign competition, which is subsidized by governments and supported by new plants and by low costs for production and capital. Others say U.S. managers' obsession with short-term earnings and lack of attention to product quality. Missing from this analysis is a realistic appraisal of the financial economics of today's competing industries.

To put it in the simplest terms, management and labor have bargained their way into an economic corner. They have set wages and fringe benefits at levels far beyond the ability of many companies to pay. Had the escalation not occurred, many mature industries would not suffer as they now do and they would have access to the capital necessary to modernize. Through case studies of the employee buyout of Weirton Steel, the upheaval in the meat-packing industry, and the competition between railways and trucking companies, the author shows where management and labor made their mistakes and suggests how to avoid these mistakes in the future.

Mr. Fruhan is professor of business administration at the Harvard Business School, where he teaches corporate finance. He has written three other HBR articles. During the past five years, his primary research has centered on the financial dilemmas facing executives of mature industries. He is the author of Revitalizing Businesses: Shareholder Work Force Conflicts *(Division of Research, Harvard Business School, 1985) and of* Financial Strategy *(Richard D. Irwin, 1979) and coeditor of* Case Problems in Finance *(Richard D. Irwin, 1981).*

Across mature industries, a "revolution," we are told, has occurred:

☐ The employees of the Weirton division of National Steel have bought the ownership of their plant in the largest employee buyout in history.

☐ Eastern Air Lines has given its employees 25% of its common stock, agreed to lucrative profit sharing when net earnings exceed $90 million, and said it will give back wage increases when productivity rebounds.

☐ United Air Lines has set up a two-tiered wage structure under which it will hire new pilots on a scale 40% lower than that of those already employed.

Recognizing that current operating costs are too high, the managers of mature and deregulated businesses have used concessionary bargaining to restructure industrywide wage agreements. Wage reductions are as common today as double-digit annual wage increases were only a few years ago. A good thing? A bad thing? A good thing too late?

After five years of study of basic industries, I believe that bargaining decisions that have resulted in a rising standard of living and economic health for employees – and that have satisfied the short-term concerns of managers – have also destroyed the economic structures of numerous mature industries. In labor contracts, managers have bargained away their competitiveness on the assumption that if every domestic company faced the same wage structure, none would suffer a competitive disadvantage. The consumer would pay for the consequences – not labor, management, or the shareholders. But the consumer has not paid.

In negotiation after negotiation, companies have not carefully considered the long-run implications of their decisions. In the fairy tale atmosphere of the 1950s and 1960s, both management and labor

Exhibit I

Pro forma financial projections for Weirton division of National Steel Corporation under various operating assumptions 1984 – 1989
in millions of dollars

			1984	1985	1986	1987	1988	1989	Six-year total	Assumption
Pro forma income statement										
	1	Net sales	$ 1,019	$ 1,150	$ 1,250	$ 1,342	$ 1,395	$ 1,402	$ 7,558	Before modernization expenditures
	2	Cost of goods sold	976	1,071	1,154	1,230	1,285	1,303	7,019	
	3	Gross profit	43	79	96	112	110	99	539	
	4	Other operating expenses	104	111	117	122	128	133	715	
	5	Operating profits	– 61	– 32	– 21	– 10	– 18	– 34	–176	
	6	Depreciation of existing equipment	21	21	21	21	21	21	126	
	7	Other noninterest expense	6	11	6	6	7	7	43	
	8	Pretax profit before financing charges	– 88	– 64	– 48	– 37	– 46	– 62	–344	
	9	Savings from cost improvements	26	28	29	30	32	34	179	After modernization expenditures
	10	Savings from capital investment expenditures	3	3	8	8	53	50	125	
	11	Depreciation of new equipment	5	11	18	24	31	37	126	
	12	Pretax profit before financing charges	– 64	– 44	– 29	– 23	8	– 15	–166	
	13	Savings from labor cost reductions	120	130	135	139	141	141	806	After 32% labor cost reduction and modernization expenditures
	14	Pretax profit before financing charges	56	86	106	116	149	126	640	
Uses of funds statement										
	15	Uses of funds as capital expenditures	72	84	83	83	81	81	484	After modernization expenditures
	16	Uses of funds as an increase in working capital	– 4	3	1	0	– 1	1	0	
	17	Total uses of funds	68	87	84	83	80	82	484	

thought that their companies were like golden geese that would lay golden eggs whenever needed.

The cases of the steel, meat-packing, rail, and trucking industries prove otherwise. The lessons to be learned are varied and apply to a wide range of industries. They show that management should:

1 Fully analyze the economic consequences of the "contingent obligations" they incur in bargaining with labor, including shutdown benefits, early retirement provisions, and health care obligations for retirees. At a seminar for senior financial officers, for example, I asked how many were involved in negotiating major investment decisions; essentially all said they were. When asked whether they evaluated, negotiated, or even participated in major wage and benefit contracts, almost none said they did. While such a sampling is unscientific, it indicates a problem. The one big investment decision in a mature business has been completely escaping the scrutiny of the CFO.

2 Avoid getting trapped in uneconomic businesses. Managers must guard the exit door at least as carefully as they guard current operating costs, and they must understand that diversification helps preserve the exit. While much current management philosophy (in both financial and strategic circles) stresses the idea of "doing what you know best," management will lose bargaining power with labor if it has to contemplate getting out of one business before it becomes firmly established in another.

The experience of these mature industries indicates that management has failed to adequately consider the ramifications of its actions at the bargaining table for the financial health of the business. In the end, a significant segment of mature industry has become owned, de facto, by the work force. In some cases, employees have even become the legal owners.

Steel: a hapless goose?

In the past 25 years the steel industry has experienced an unprecedented redistribution of corporate wealth. Collective bargaining has yielded impressive improvements in pension and health care benefits during the same time that the industry has come under pressure from stagnant demand and increased foreign competition.

The terms under which steelworkers can retire have become more and more generous as incremental enhancements have erected barriers to corporate exit from the industry. If a steel company wants to close a plant, it becomes obligated to pay unreserved and unfunded pension and health care costs that generally far exceed the liquidation value of the plant and related working capital. In financial terms, an uneconomic but operating steel plant has a large negative net present value for its shareholder owners.

This general industry problem achieved public recognition when National Steel turned over the assets of the Weirton division in January 1984 to its employees and made it the largest employee-owned enterprise in America. The purchase culminated 22 months of joint owner and employee effort to save the facility from liquidation; the final decision turned on management's analysis that the company could not economically operate or modernize the facility.

On a business-as-usual basis (without modernization expenditures), National estimated pretax losses for 1984-1989 would total $334 million before financing charges. Even if National were to reduce costs as aggressively as possible and increase capital spending to almost $500 million, it would still lose $166 million.

The financial forecasts shown in *Exhibit I* were clearly unattractive to National Steel executives. The financial consequences flowing from past investments in projects with inadequate returns are all too clearly reflected in *Exhibit II*. From 1972 to 1981, National achieved a return on equity of more than 10% in only one year, shareholders increased their equity investment by nearly $500 million, while the market value of that equity fell more than $300 million. The destruction of the shareholder wealth produced by capital investment in projects that had inadequate returns continued over a long period of time.

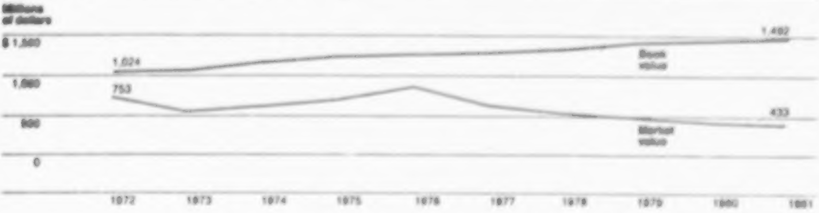
Too many golden eggs at once

The details of the Weirton buyout have been well publicized. But the most important aspect of the story – the lesson for management – has not. It is the story of compounding contingent liabilities and failing to anticipate the cost of these contingent liabilities. It is the story of how a management – always believing that it could walk away from Weirton if necessary yet systematically cutting off its option to walk away – negotiated itself into a position of negative net present value. It is the story of the expropriation of a business once the option to exit became too expensive to exercise.

What started it all was a collective bargaining process that began with the watershed year of 1959 – notable because of the invocation of the Taft-Hartley Act and a subtle shift in bargaining emphasis. Management in the steel industry first began to trade away its economic options, although it realized it had

Exhibit II **National Steel Corporation common stock market value – book value ratio and corporate profitability 1972-1981**

	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981
Market value / Book value	.74	.62	.52	.59	.60	.46	.42	.36	.33	.29
Return on equity	.070	.082	.147	.048	.068	.047	.084	.089	.058	.058



short-term difficulties, it believed the long run would bring relief. Instead, the situation worsened.

In the 1959 negotiation, for example, the union rank and file were angling for improved fringe benefits, including expanded hospitalization, company-paid insurance, a lower retirement age, and more generous pensions, while their union leaders wanted higher wages. But the steel industry, fearing an onslaught of foreign steel imports and seeking more production efficiency, wanted to be free of the contractual necessity to keep on a certain number of workers in each plant. The battle cry was "management rights"; if labor would agree to allow automation and production efficiencies, management would agree to meet the unions halfway.

But management went more than halfway. The next year brought a rosier outlook for steel than 1959. A Republican administration under electoral heat persuaded steel executives that changes in union work rules to allow production efficiencies were unnecessary – that management could achieve its objectives within existing rules. Not only did management respond to these political and economic pressures by granting "normal" wage increases, but it improved employee fringe benefits as well. One new benefit (a "contingent" liability) was potentially devastating: the so-called 70/80 provision, which permits workers who begin continuous employment at age 18 to retire early on an unreduced pension if the plant closes after they reach 49 (see the early retirement provision of the 1969 agreement in *Exhibit III*). Management began to close off its options. The contingent liability was acceptable to management because it was inconceivable that it would become economically significant.

In 1966, collective bargaining produced a "30 and out" option, whereby a worker completing 30 years of service could retire early for any reason. A plant shutdown or layoff was not a precondition. But because of the pension supplement offered under the 70/80 provision, employees with 30 years of service facing a plant shutdown would probably choose to retire under this provision – not the 30 and out alternative – and the cost of a shutdown to producers would rise.

In the same way, a "rule of 65" became effective in 1978 and permitted a worker who began continuous employment in a steel plant somewhat later in life to enjoy benefits similar to, but somewhat less than, those available under the 70/80 provision.

Despite what these provisions meant should management want to close a plant, nowhere did Weirton's accounting system reflect their potential impact.

The goose gets too expensive

While workers' fringe benefits improved dramatically in the 1960s, steel wages increased but did not rise any faster than wage levels in other manufacturing industries. Steel wages remained at about the same ratio (31%) above the average of wages in other manufacturing industries. It is important to grasp the fact that as long as steel wages increased in the same magnitude as those in other manufacturing industries – and thus maintained their historic relationship – steel companies stayed in reasonably good health.

After 1973, the economics of the steel industry changed; compensation concessions then proved fatal. The reason for such corporate largesse was the seemingly rosier economic climate. Imports had stabilized at around 12% of the market (they now account for more than 25%), demand had pressured capacity, and management had sought labor peace. Unions agreed to the Experimental Negotiating Agreement; it gave management relative freedom from the threat of strikes (and the resulting pressure from the hedge-buying of imported steel) in return for general cost-of-living adjustments to labor's pay.

From 1973 through 1982, steel led all major U.S. industries in wage progress. For example, it was up 146% during the period in comparison with 133% for motor vehicles and car bodies, 130% for aircraft, 123% for tires and inner tubes, and 108% for electric and electronic equipment. All manufacturing wages together rose 108% in 1973-1982. The result: wages climbed from a level 31% above the wages in all manufacturing to one 64% higher than those paid to other manufacturing workers. (See *Exhibit IV*.)

The change in the relationship of total compensation (including fringe benefits) was even more dramatic. From 1964 to 1973, the total compensation of steelworkers was roughly 31% higher than the total compensation of workers engaged in all manufacturing (see *Exhibit V*). By 1982, total compensation of steelworkers had jumped to a 92% premium above that in all manufacturing.

When the wage ratio premium rises, either the work has become more difficult – or the employees have gotten a better deal. The consequences of the latter are telling. For example, if the ratio between the total hourly compensation of steelworkers and that of workers in all manufacturing remained stable after 1973, by 1982 steelworkers' compensation would have averaged $16.81 per hour, 30% below the actual figure. The change in this ratio added $60,000 in compensation cost for the average steelworker employed throughout the 1974-1982 period (see column 8 of *Exhibit V*). Theoretically, if this extra $60,000 per person had not been paid to the 8,000 members of the Weirton work force, it would almost have totaled the $484 million National needed to modernize the Weirton facility in 1984 (see line 15, *Exhibit I*). Simply stated, the modernization budget went into the pay packet of the Weirton work force.

Exhibit III **Evolution of the early retirement pension benefits in the basic steel pattern plan**
1960-1982

Year applicable	**Early retirement provision**	**Basic pension benefit**	**Supplement to basic benefit if plant shuts down**
1960	Applicable at age 60 with 15 years service under an actuarially reduced pension. Following plant shutdown, two-year layoff or, with consent of company, early retirement with 15 years' service if age plus years of service equal 80 (or 75 if employee is over 55)	1% of average compensation over the last 10 years of service times years of service, offset by a portion of Social Security	None
1966	Applicable after 30 years	Social Security offset reduced	None
1969	Following plant shutdown, early retirement possible if age plus service equal 80 (or 70 – not 75 – if employee is over 55)	Social Security offset eliminated	Supplement of $900 a year until start of Social Security
1972	No change	Slightly increased	Supplement increased to $1,260 per year
1975	If employee retires after age 62 with 15 years' service, pension is no longer actuarially reduced	Basic pension calculation based on highest 5 of the last 10 consecutive years.	Supplement increased to $2,760 per year, payable until Social Security starts at age 62
1978	Following plant shutdown, layoff, or consent of company, early retirement with 20 years' service if age plus service equal 65 and company makes no offer of suitable substitute employment	Calculation changed to 1.155% of average compensation (highest 5 of last 10 consecutive years) multiplied by years of service for up to 30 years. Multiple is 1.26% if years of service are more than 30	Supplement increased to $3,600 until age 62 Supplement reduced by 50% of earnings after retirement for payments exceeding $4,500 a year
1981	No change	No change	Supplement raised to $4,800 a year

Exhibit IV **Hourly earnings trends of production workers in selected major industries**

	Average hourly earnings 1973	Average hourly earnings 1982*	Percent of increase 1973-1982
Selected manufacturing industries			
Blast furnaces and steel mills	$ 5.61	$ 13.80	146 %
Motor vehicles and car bodies	5.70	13.30	133
Aircraft	5.09	11.72	130
Tires and inner tubes	5.23	11.68	123
Electric and electronic equipment	3.91	8.14	108
Major industrial groups			
Mining	4.75	10.78	127
Manufacturing	4.09	8.50	108
Services	3.47	6.84	97
Construction	6.41	11.47	79

*Data for the month of June 1982

Sources:
Audrey Freedman and William E. Fulmer,
"Last Rites for Pattern Bargaining,"
HBR March-April 1982, p. 30.
U.S. Department of Labor,
Employment and Earnings, 1909-1978.
U.S. Department of Labor,
Employment and Earnings, July 1983

Of course, National's management tried but could not pass on the added costs to steel consumers in the form of higher prices. The combination of a strong U.S. dollar, foreign subsidies, stagnant worldwide demand, domestic competition from nonunion minimills, increasing production capacity in the developing world, and aggressive foreign price competition prohibited such a strategy. As I said earlier, productivity gains could not cover the gap either. Only the providers of capital remained to shoulder the cost of the compensation gains for labor.

As we have seen in *Exhibit II*, steel shareholders bore the brunt of labor's gain, so at National Steel (as well as at the other integrated U.S. steel producers) equity capital providers went on strike. National Steel's management got the message and stopped new investments at Weirton, its least efficient major facility. (In 1984, National tried to throw in the towel on the balance of its steel production business by agreeing to sell this business to U.S. Steel, but opposition by the U.S. Justice Department helped cancel the agreement. National then sold a 50% interest in what remained of its steel operations to Nippon Kokan K.K. for $292 million, and it reached – but then recently terminated – an agreement to merge with Bergen Brunswig in a stock-for-stock transaction valued at $580 million.)

Hoping for a new goose

Under normal business economics, once a company rules out new investment at a big facility like Weirton, the idea of closing the plant almost inevitably follows. But collective bargaining destroyed the normal economics in this case.

The three early retirement options described before were bargained into the fabric of the basic steel pattern agreement over an 18-year period (see *Exhibit III*). In the event of a shutdown at Weirton, for example, 4,100 of the 8,000 employees would have been entitled to retire under one of these options. Almost 3,200 workers would be entitled to a basic pension supplement under the early retirement options of *Exhibit III*. An employee joining National at age 18 in 1951 would have 31 years of service, be 49 years old in 1982, and be entitled to a pension equal to about 36% of his or her average annual wages for the past five years plus an annual supplement of $4,800, under the 70/80 provision.

Taken together, the present value of the future cost of the added pension obligation – a "contingent liability" that would be converted into an "actual liability" by a Weirton closing – was estimated at $318 million, of which almost $125 million came from pension supplements. Not included were the costs of health care benefits, life insurance protection, and termination pay. Like most companies, National Steel bore these costs and carried them as items of current expense only as they were incurred. In 1983 the cost of health care coverage was about $2,500 per family for retirees under age 65 and about $1,000 per family for retirees over age 65 whose primary insurer was Medicare. The present value of the future health care costs of early retirement could easily reach $25,000 per retiree.

The growing size of these obligations for retirees has caught the attention of the Financial Accounting Standards Board. The FASB has stated that companies should not treat such obligations on a pay-as-you-go basis but should accrue them over the periods in which employees render service. According to FASB 81 (issued in November 1984), corporate annual reports for 1984 were to include some limited disclosure of the cost of health care benefits to retirees. Recommendations for more stringent reporting requirements are expected to follow.

Exhibit V **Average wage and compensation data for workers engaged in steel production and for workers in all manufacturing industries 1964-1982**

	1	2	3	4	5	6	7	8
Year	Average hourly earnings		Percent premium*	Average hourly total compensation		Percent premium*	Average hours steelworkers work per week	Steelworkers' annual compensation premium†
	Steel	All manufacturing		Steel	All manufacturing			
1982	$ 13.96	$ 8.50	64 %	$ 23.78	$ 12.36	92 %	33.3 hours	$ 13,215
1981	13.11	7.99	64	20.16	11.39	77	36.4	9,985
1980	11.84	7.27	63	18.45	10.36	78	35.7	8,106
1979	10.77	6.70	61	15.82	9.20	72	37.5	7,307
1978	9.70	6.17	57	14.30	8.46	69	37.9	6,395
1977	8.67	5.68	53	13.04	7.81	67	36.7	5,405
1976	7.86	5.22	51	11.74	7.21	63	36.4	4,380
1975	7.11	4.83	47	10.59	6.67	59	35.1	3,410
1974	6.38	4.42	44	9.08	5.96	52	37.7	1,532
1973	5.56	4.09	36	7.68	5.39	43	38.5	1,275
1972	5.15	3.82	35	7.08	5.03	41	37.3	982
1971	4.57	3.57	28	6.26	4.77	31	36.1	43
1970	4.22	3.35	26	5.68	4.50	26	36.7	−381
1969	4.09	3.19	28	5.38	4.21	28	38.6	−245
1968	3.82	3.01	27	5.03	3.94	28	37.7	−225
1967	3.62	2.82	28	4.76	3.67	30	37.0	−72
1966	3.56	2.71	31	4.63	3.50	32	38.2	113
1965	3.46	2.61	33	4.48	3.34	34	37.7	218
1964	3.41	2.53	35	4.36	3.28	33	38.3	145
Average data for 1964-1972			~31			~31		

Sources:
Report to the President on Prices and Costs in the United States Steel Industry by the Council on Wage and Price Stability, October 1977; American Iron and Steel Institute, *Annual Statistical Report*, 1982; *Economic Report of the President*, February 1984; U.S. Department of Labor, *Monthly Labor Review*, December 1983.

*The percent premium is the gap between the earnings in steel and the earnings in all manufacturing divided by the earnings in all manufacturing; it shows how much more pay the steelworker gets than the typical worker in all manufacturing.

†Column 8 is the total additional compensation earned by the average steelworker in the year indicated measured against the compensation the steelworker would have earned if steelworker compensation had continued to exceed the compensation of the average worker in "all manufacturing" by only 31% (the average 1964-1973 premium).

Owning the goose

Why is it important to worry about the present value of the future costs of employee benefits? If you analyzed the net present value of the future health care costs for early retirees if Weirton closed its doors, you would probably find that the bill exceeds $100 million. The magnitude of such exposure creates major problems when a company wants to close a plant. Obviously, the plant will no longer produce any income with which to pay these unreserved and unfunded future benefits. Who will pay? Lawsuits have grown around that question.

Colt Industries recently tried to terminate the medical benefits for 4,200 retirees of its Crucible Steel division, which had been closed and sold to Jones & Laughlin Steel Corporation. Litigation initiated by the United Steelworkers of America and public pressure from Crucible's retirees produced a one-year interim solution that requires modest monthly contributions from retirees. If a settlement is not negotiated within one year, the litigation will be reinstated. Following the Colt action, Bethlehem Steel decided non-union retirees should shoulder a large share of their health insurance costs. Legal action commenced and Bethlehem was forced on an interim basis to restore all benefits. A court-approved settlement was reached in mid-1985 that ensures future health insurance coverage at a modest cost to nonunion retirees.

In Weirton's case, the present value of the unreserved and unfunded total cash outlays precipitated by early retirements resulting from a plant shutdown would exceed $418 million. The cost of severance pay and health care continuation payments for about 4,000 other terminated employees not qualifying for early retirement (or qualifying with only a reduced pension) would easily bring the total shutdown costs to $450 million as of December 31, 1982. Spread over a base of 8,000 employees, the cost would amount to approximately $56,000 per employee.

While collective bargaining gains were improving the lot of the work force, they were devastating the value of National Steel's investment in Weirton. *Exhibit VI* shows the impact. Because the book value of National Steel's net investment was $448 million (see line 8 of this exhibit), unless National Steel could liquidate the assets of Weirton at slightly more than book value (a hopelessly optimistic assumption), National Steel would be ahead of the game if it could give away its investment rather than liquidate the assets. Indeed, under the "most likely" liquidation value assumptions as presented – albeit in a highly simplified way – in *Exhibit VI*, National Steel should have been indifferent to the two choices: (1) paying a responsible buyer $295 million in cash to take on the net assets and ongoing business responsibilities of Weirton or (2) liquidating the facility.

Management was caught in a web of contingent liabilities of staggering proportion. Of course, collective bargaining has vastly improved the economic lot of Weirton's work force. But competition has caused that success to reduce profitability and to frighten off the providers of capital. With no profits and no access to new capital, a business obviously cannot continue. Because management has guaranteed – and escalated – exit payments (early retirement, plant shutdown supplements, and retiree health care benefits), National must pay the Weirton work force far more than the value it could obtain from selling the Weirton net assets in order to be able to get out of the business.

One reason that companies aren't forced to recognize the potential economic consequences of their collective bargaining actions is that the contingent obligations associated with these agreements don't have to be disclosed. The magnitude of the exit barrier at Weirton was not evident from any financial statement. Yet once the exit barriers described in *Exhibit III* had finally locked in place, the escalating wage trap of *Exhibit IV* and *Exhibit V* was ready to be sprung. Weirton Steel was no longer owned by National Steel's shareholders but by the Weirton work force long before the formal purchase negotiations took place. The ownership was de facto. The formal purchase negotiations simply made the work force's ownership de jure.

Could National Steel's management have made Weirton a viable business as of 1982? If the compensation of the Weirton work force were reduced by 32%, Weirton's employees would still enjoy a total compensation level 31% higher than the average level of workers in all U.S. manufacturing. At this rate Weirton's workers would presumably still be receiving at least a free market rate of compensation based on historical wage relationships between steel and all manufacturing.

Line 14 of *Exhibit I* suggests how Weirton's profitability might have changed between 1984 and 1989 if the union employees had accepted the 32% decrease. These profitability levels would allow Weirton two advantages:

> Access to the capital markets to fund both the acquisition of Weirton's net assets and the capital expenditures required for modernization.
>
> Recovery in later years of much of the value of the 32% compensation reduction via profit sharing and/or equity participation.

Exhibit VI **Estimate of the value to National Steel of the net assets of the Weirton division assuming a liquidation of the division's assets**
in millions of dollars

		Book value	**Most likely liquidation value**
1	Current assets	$ 314	$ 314
2	Other assets (primarily property, plant, and equipment)	326	33
3	**Total assets**	**$ 640**	**$ 347**
4	Current liabilities	$ 101	$ 101
5	Other liabilities	91	91
6	Employee-related liabilities	–	450
7	**Total liabilities**	**$ 192**	**$ 642**
8	**Value of National Steel's investment**	**$ 448**	**– $ 295**

While the *Exhibit I* numbers suggest that Weirton could still be a viable business beyond 1982 with substantial compensation reductions, National had no leverage available to gain these concessions. Exceptionally high exit barriers made the cost of a closedown too high to pursue. The Weirton employees would only accept the reduction in return for their acquisition of the company's net assets by way of an employee stock ownership plan, which was to start in January 1984.

A total of 6,203 out of 6,977 union employees voted in favor of the pay reduction needed to complete the acquisition transaction. For Weirton's net assets the employees paid $75 million in cash (supplied by lenders) and $119 million in bargain-interest-rate, long-term subordinated notes (supplied by the seller), which National valued at $75 million. At the same time, National agreed to absorb $204 million of employment-related costs associated with the sale – essentially giving the work force the assets for nothing. National Steel got quite a bargain nonetheless since the company might have been willing to pay the work force a far greater sum to accept the net assets.

In the first year of operations (1984) Weirton earned $60 million, a figure exceeding the forecasts.

A wolf in steer's clothing?

Am I making too much of this incident? Didn't the steel industry suffer from a foreign competitor subsidized by its government? What has happened in the steel industry is not an isolated incident. While Weirton provides one of the more extreme examples (since the work force wound up with ownership of the business essentially for nothing), similar dramas are being played out – and will be played out – across many industries. But in other mature industries, where managers have retained some bargaining options, the end point need not be the same.

The meat-packing industry, for example, had an industrywide wage agreement like that in steel, but management left an exit door open.

Just as the steelworkers bargained under a master agreement, so a similar arrangement between the United Food and Commercial Workers International Union and the principal companies governed meat-packing, it included fringes and an adjustment for increases in the cost-of-living index. For many years, wage levels for meat-packers remained at about the same percentage (between 14% and 15% above the average) of all manufacturing. The fringe benefits negotiated – particularly the termination benefits paid to workers in case of plant closings – were not as high as those in the steel industry, however. The master agreement provided for six months' advance notice, eight weeks' severance pay, and early retirement for employees over age 55 with ten years of service. Total added cost: about $15,000 per employee – substantially below the $56,000 per employee figure projected at Weirton.

Like a steer in the night

Enter IBP, formerly Iowa Beef Processors, whose management understood that the economics of the industry allowed room for a competitor to cut costs, reduce prices, and earn a higher return than the industry average. It introduced new technologies, located plants near midwestern cattle suppliers, and achieved high levels of profitability by paying lower wages than those specified in the master agreement. IBP's low cost structure and fast growth rate forced the meat-packing industry to restructure.

Meat-packing executives were caught, as were those in steel, but not to the same extent. Large conglomerates like LTV Corporation, Greyhound, and Esmark had acquired the major old-line meat-packing companies in 1967-1970. Because the meat-packing divisions were only small pieces of these larger corporations, their problems did not threaten the viability of the parent companies (as they did in steel). Parent company executives had the leeway to take more drastic measures than those available to the National Steel managers.

The resulting transactions were complex. Because it could find no buyer for Swift, Esmark, for example, transferred all Swift assets not related to the fresh meat business to other parts of Esmark. Then it sold its Swift stock to a new company, Swift Independent Corporation (SIPCO), in a two-step transaction for cash and securities. The bulk of SIPCO's stock was sold to the public through an initial offering. Esmark retained 35% of the common stock, and 10% was reserved for employee ownership.

But before the public would buy SIPCO, Esmark had to make provisions for unreserved and unfunded liabilities. First, it contributed $16.7 million to fully fund the pension plan for the active employees and paid an additional $6.2 million to a newly established trust to fund *in advance* the cost of health care insurance for SIPCO's active employees once they reached retirement. (In the past Esmark, like other employers, had met retiree health care obligations on a pay-as-you-go basis.) Second, Esmark paid $25.8 million in employee termination pay and related obligations in order to close three plants ultimately con-

Exhibit VII **Ratio of hourly wages in steel, railroads, trucking, and meat-packing in relation to wages in all manufacturing industries 1967-1984**

	Steel	Railroads	Trucking	Meat-packing
1984*	1.47	1.45	1.15	.89
1983	1.52	1.45	1.20	.97
1982	1.64	1.36	1.24	1.06
1981	1.64	1.33	1.27	1.12
1980	1.63	1.36	1.28	1.17
1979	1.61	1.33	1.27	1.15
1978	1.57	1.26	1.28	1.15
1977	1.53	1.30	1.27	1.16
1976	1.51	1.32	1.26	1.16
1975	1.47	1.25	1.27	1.17
1974	1.44	1.29	1.30	1.18
1973	1.36	1.32	1.32	1.16
1972	1.35	1.28	1.30	1.17
1971	1.28	1.22	1.27	1.18
1970	1.26	1.16	1.18	1.19
1969	1.28	1.15	1.16	1.15
1968	1.27	1.14	1.16	1.15
1967	1.28	1.15	1.17	1.15

Sources:
U.S. Department of Labor Bureau of Labor Statistics, *Employment and Earnings, 1909-1978*
U.S. Department of Labor Bureau of Labor Statistics, *Employment and Earnings*, July-November 1983, March 1984, and November 1984

*The figures for 1984 are estimates

veyed to SIPCO so that they could reopen with more competitive labor costs. Third, Esmark assumed the pension and health care costs of employees who retired as a result of the closing of facilities conveyed to SIPCO.

Esmark's management substantially reduced the cost structure and created a more efficient operation. Before the restructuring, Esmark had to operate its meat-packing plants at an employment cost disadvantage of about $4 per hour in comparison with the competition not operating under the master agreement.

This amounted to a cost disadvantage of nearly $8,000 per employee per year ($4.00 per hour x 2,000 hours per year). By paying termination expenses of $15,000 per employee, Esmark could save $8,000 per employee per year. This was an investment opportunity with an extremely high return, and it would put the newly revamped SIPCO in a good competitive position.

Jumping the fence

Other meat-packing executives were not as fortunate as those of Esmark. LTV, Wilson Foods' parent, did not have the financial resources to fund the termination of Wilson's work force in order to achieve lowered wage levels. Wilson was thus forced into a corner. LTV spun off Wilson Foods as an independent company in July 1981. The new company did well at first because the United Food and Commercial Workers International Union agreed to a 44-month wage freeze and suspended cost-of-living adjustments. When the same union signed agreements with other companies permitting even greater wage reductions and other concessions, Wilson could not compete and saw its profits turn to losses.

The culprit? IBP, which had entered the pork business and forced more than 100 pork-processing plants in the Midwest to close between 1980 and 1983. Many of these plants reopened with lower wages and benefits and left Wilson paying a wage package almost 40% higher than theirs. By early 1983, the margins between the price received for fresh pork and the cost to buy and butcher hogs fell to a historic low for the whole industry. Wilson vainly tried to renegotiate the wage contract, ran up against its loan covenants, and faced insolvency.

What could Wilson's management, running out of time and money, do? Wilson could wait until the current labor agreement ran out to renegotiate the rate (at a pretax cost disadvantage of $145 million, if it could survive for 29 months). It could close the plants and terminate the work force (at a cost of $100 million, or 6,500 union workers at $15,000 in termination costs). Or it could file for bankruptcy, pay no termination expenses, and achieve cost advantages almost at once (until the work force struck back).

In April 1983, Wilson filed a voluntary bankruptcy petition and applied to have its collective bargaining agreements rejected. Wilson's reopened plants paid $9.90 an hour in wages and benefits, 37% below the 1983 rate of $15.66, and saved an estimated $5 million a month.

In the end, however, Wilson agreed to increase its total wage and benefits package to $11 an hour because of wildcat strikes. Wilson's bankruptcy cost the company about $20 million in the form of a strike and business disruptions and yet allowed it to realize savings of approximately $40 million to $50 million a year.

IBP achieved the same objective as many foreign competitors in other industries but without the advantages usually attributed to foreign competitors. No government funded its research effort or provided subsidies to allow it to undercut U.S. prices.

IBP's management understood the economics of its industry, looked at the costs of doing business, and restructured them. From 1980 through 1984, wage levels in meat-packing fell from 1.17 times that of all manufacturing to about .89 times – a fall of 24% that probably placed wage levels at close to free market rates [see *Exhibit VII*].

How did the restructuring of the meat-packing industry differ from the restructuring of the steel industry as represented by Weirton?

First, the return on an investment in termination expenses in steel is far lower than it is in meat-packing. A $15,000 investment saves $8,000 per employee in meat-packing. A $56,000 investment would save only about $14,000 in lower annual costs per employee at Weirton.

Second, the absolute size of the exit barrier is enormously higher in steel. Closing a plant such as Weirton with 8,000 employees would cost almost $500 million. Closing a large meat-packing plant with 2,000 employees would cost only $30 million.

Finally, steel manufacturers are less well diversified than the companies owning large meat-packing subsidiaries. The closure of all or a significant portion of the entire business was less credible as a negotiating threat in steel than it was in meat-packing. The tax benefits associated with losses incurred in closure would also take longer to realize in a less diversified company.

In short, the owners of meat-packing companies were in a better position to retain some value from their investments than were the owners of steel plants. Once wage levels had become a competitive disadvantage, the size of the exit barrier in the form of negotiated contractual termination obligations to the work force made the difference.

Hardly a fairy tale

In the competitive struggle between railroads and the deregulated trucking industry, the railroads are fighting a battle similar to the steel companies'. Since 1970, when the federal government stepped in to save Conrail, railroad wage levels have grown from around 1.16 times the average paid in manufacturing to 1.45 times. In contrast, the fragmented trucking industry's average wages have risen and then settled back near the 1970 ratios [see *Exhibit VII*]. Truckers have used this labor cost advantage to take market share gradually away from the railroads. While railroads will always haul heavy low-value commodities, their high labor rates are giving the truckers an ever-increasing share of shipments.

Rail management and labor face the clear choices already made in steel and meat-packing. They can reach agreement on shrinking the pay gap between trucking and railroads [see *Exhibit VII*], or if this cannot be accomplished, they can continue to invest in productivity improvements but see the benefits of these improvements go to expanding the pay gap for a rapidly shrinking work force. Or they can make a strategic decision to withdraw from the core business, as National Intergroup [formerly National Steel] did, and direct future capital investment into other businesses.

Two messages for managing mature businesses clearly emerge from the examples of steel, meat-packing, trucking, and railroads.

Guard the exit

First, make certain you have a way to get out of the business. Once you've lost the exit, you will lose the business to escalating wage costs. Your potential cost exposure in a shutdown should be monitored as carefully as your overall operating cost structure. During bargaining negotiation, always project the effects of all non-wage-contingent obligations on your exit cost. You may never have to pay them, but your successor will if you fail to take them into account.

Diversify

Second, consider new business activities. Diversification provides two critical benefits. If you do have to shut down a plant or a whole line of business, any tax benefits resulting from the write-off will be less valuable if you have no significant source of taxable income to offset. And what is equally significant, the existence of a diversified source of profit may strengthen your bargaining position in wage negotiations. For a diversified company, the closure of a plant or a business can be a credible threat even if such an action on a stand-alone basis might not be economically rational. U.S. Steel's acquisition of Marathon gave that company added strength along these two dimensions.

Managements that are vulnerable and that cannot do both of the foregoing should be ready to hand over the keys to a well-informed and ably represented work force. Owners of such businesses should count their blessings if they don't have to pay to get out the door once they've handed over the keys. ⊕

Senator SIMON. While he was not listed as a witness originally, Mr. Irving, representing the National Association of Manufacturers, has requested to testify, and we will be pleased to have you testify, Mr. Irving.

Mr. IRVING. Thank you, Senator, and I will try to abide by your time targets as well.

I am really a return witness, a holdover if you will, from the last hearing. There was not enough time to get on in the earlier meeting.

The NAM is deeply concerned about the notice and consultation provisions of Title II of this bill, 538, and we would like to focus our testimony on that, one, because it is our primary objection, and two, because this is our first and only opportunity to testify, and we want to focus our comments on the matters that give us the most problem.

The NAM's policy is to encourage voluntary advance notice, but the NAM opposes mandatory notice provisions. Flexibility is needed for American manufacturers to compete, and the notice and consultation requirements of Title II of 538 in NAM's view are anticompetitive and counterproductive.

We say that because the fundamental defect of Title II is that it is geared to preventing layoffs and closings. I should say "obstructing" layoffs and closings. It is geared in effect to changing employers' minds and creating risks and penalties in the event employers fail to change their minds.

We have prepared an analysis of 538, and Senator, we would like to request that the information, the analysis and the correspondence accompanying my statement be included in the record as well.

Senator SIMON. It will be included in the record.

Mr. IRVING. Thank you.

In the interest of time, I will just summarize some of the main problems that the NAM sees with respect to Title II. First of all, the consultation provisions we view as a trap for employers. Why? Because those consultation provisions require, quote, "good faith consultation for the purpose of agreeing to alternatives that others suggest" and which in most cases, the employer has already rejected.

Consultations are not just with unions, but with other employee representatives as well and with local governments so we could potentially have several different good faith consultations going on at once. The good faith consultation is required throughout the notice period, that is, right up until the last day, and any failure to do so leads to fines, back pay liabilities, class actions, lawsuits, attorneys' fees and costs.

The duty to supply information is a separate requirement under Title II, and it too we view as a trap for employers. Any relevant information is required to be supplied about any alternative, not just the one the employer is considering, but any alternative throughout the notice period that any representative of employees or local governments might propose.

The failure to supply relevant information means noncompliance with, again, lawsuits, penalties, liabilities for back pay, and so forth.

The notice periods we view as unrealistic. Indeed, they are even more than the four-month notice requirements under Canadian law which is so often cited by the proponents of this bill. They fail to take into account all of the circumstances. The provisions for shortening the notice period is worded in such a way as to make it difficult or often impossible to invoke. It is invoked properly only if unforeseeable business circumstances prevent the employer from waiting the full notice period. So it has to be unforeseeable, and if it is not, it does not come within this time-shortening provision, and the circumstances have to actually prevent the employer from waiting the full period, and in combination, that provision will either not be used because it is vague or will result in a burden on the courts and employers while issues are being litigated.

The employee representative selection procedures are vague and confused. State and local jurisdictions are indeed authorized and even encouraged to enact their own plant closing and layoff laws. These can be stricter, apparently, than the Federal requirements.

In the time left, I would just like to mention that some confusion seems to have arisen about whether the bill provides for injunctions. There is nothing in 538 or Title II that refers to injunctions. On the other hand, there is nothing in 538 or Title II that prohibits injunctions, and the injunctive power of courts is found in courts' inherent equity powers. There is nothing to prohibit it. I would refer the Senator to Rule 5 of the Federal Rules of Civil Procedure and Sections 29.41 and 29.46. And I would also add that by encouraging States and localities to formulate their own plant closing laws, injunctive provisions could be included in those.

We thank you very much for the opportunity to testify.

[The prepared statement of Mr. Irving, with attachments, follows:]

MANUFACTURING
CREATES
AMERICA'S
STRENGTH

TESTIMONY OF

JOHN S. IRVING, JR.

ON BEHALF OF THE

NATIONAL ASSOCIATION OF MANUFACTURERS

ON

THE ECONOMIC DISLOCATION WORKER ADJUSTMENT
ASSISTANCE ACT OF 1987, S. 538

BEFORE THE SUBCOMMITTEES ON LABOR
AND EMPLOYMENT AND PRODUCTIVITY

UNITED STATES SENATE

MARCH 26, 1987

NAM

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INTRODUCTION

Mr. Chairman and members of the Subcommittees. I am John S. Irving, Jr., a partner in the law firm of Kirkland & Ellis. I am appearing here today on behalf of the National Association of Manufacturers in my capacity as co-chairman of its Labor Law Subcommittee.

The National Association of Manufacturers is an organization of over 13,500 corporations of every size and industrial classification located in every state. Members range in size from the very large, to over 9,000 smaller manufacturing firms, each with an employee base of less than 500. NAM member companies employ 85% of all workers in manufacturing and produce over 80% of the nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through its Associations Council and National Industrial Council.

SUMMARY

We appreciate this opportunity to participate in the Subcommittees' deliberations on the Economic Dislocation Worker Adjustment Act of 1987, S. 538. My oral statement is directed to the notice and consultation provisions contained in Title II of the bill, for the NAM is deeply concerned about the harmful impact those provisions would have upon American business and its members in particular. We have, however, included in the written testimony a section addressing Titles I and III of S. 538 which NAM does support in large part.

This is not the first time that NAM has presented testimony in connection with federal plant closing legislation. For example, NAM testified before the House Subcommittee on Labor-Management Relations in May of 1983 and 1985. Our membership continues to be concerned about the problems of the dislocated worker and how best their needs can be met. They remain, however, opposed to mandatory advance notification and consultation requirements because of their detrimental impact on corporate decision-making, the creation of new job opportunities, and the ability of American business to compete in a fiercely competitive world market.

NAM's Board of Directors has adopted the following plant closing policy:

> "The National Association of Manufacturers considers that early notice of plant closings is beneficial in assisting the dislocated worker find new employment. NAM further finds that it is advisable for corporations to act responsibly in plant closings by providing as much notice as possible. In many cases, corporate policy and/or labor agreements set forth specific details including the length of time advance notice is to be given.
>
> "However, as each plant closing situation is unique, NAM does not see the wisdom in adopting federal legislative solutions which are punitive in nature and only serve to reduce employers', especially manufacturers', ability to compete in the world market. Acceptable public policy for the business community should focus on incentives to encourage early notice of workforce reductions rather than sanctions."

In accordance with this policy, NAM vigorously opposes Title II of S. 538 which, without disguise, would undermine the economic vitality of corporations by mandating unrealistic restrictions not only on closings but also layoffs and by mandating massive disclosure of confidential information about the enterprise. We have detailed the full range of problems with Title II in this testimony and included a thorough analysis of its provisions as an addendum. While proponents may be unwilling to acknowledge this fact, workforce reductions and plants closures occur for a variety of reasons, ranging from changing consumer preference to down-turns in the business cycle which are not always predictable and clearly not receptive to broad legislative restrictions.

We believe the ultimate objective of "Title II - Advance Notification and Consultation" is to discourage and/or prevent plant closings and layoffs rather than to simply provide notice to affected employees. It is punitive in nature and places significant burdens solely on employers, while doing little to help displaced workers find jobs. We are concerned that the divisive and unconstructive labor-management confrontations that have occurred in the past, most recently in the 99th Congress with H.R. 1616, the Labor-Management Notification and Consultation Act of 1985, have returned for another round.

The real losers are American workers who will benefit neither from these confrontations nor from the proposed notice and consultation provisions to which NAM objects. What workers need are constructive retraining assistance programs to lessen the impact of closings and layoffs, not guarantees against necessary structural changes in the national economy and the businesses in which they are employed. Whether or not we like the fact that change is occuring is irrelevant. It is. Consequently, we should be devoting our attention to how best we prepare workers--not only those on the shop floors but at all levels--to meet the challenges of the changes that will occur rather than expending energy and emotion on issues for which consensus has not and will not be achieved.

The entire thrust of the "notice and consultation" provisions of S. 538 is to discourage and prevent fundamental changes in operations which might ultimately result in layoffs or closings. They mandate requirements and penalties so stringent that employers will change their minds about the decision, or will not consider making those changes in the first place. Attempting to prevent layoffs and closings is as unrealistic and counterproductive in today's changing economy as it was in the past. The burdensome and costly constraints that would be placed on American entrepreneurship by enactment of Title II of S. 538 would serve to reduce businesses' ability to compete and create new employment opportunities. In the end, it is American workers and the public who would suffer.

This is especially true for small firms which create most of the new jobs today. Instead of, as you said, Mr. Chairman, in your February 18, 1987 press release, that S. 538 is directed to "giving the competitive edge back to America", we believe Title II will not contribute in any way to enhanced U.S. competitiveness. It will, in fact, lessen our ability to compete in world markets and stifle our nation's job-creating abilities, both of which would work to the advantage of our foreign competitors. If Title II is enacted, our competitors will be the winners. The losers will be American workers, consumers, stockholders and other business owners, the public, and, I would note parenthetically, the Nation's least favorite public institution, the Internal Revenue Service.

LABOR-MANAGEMENT CONFRONTATION - 1985

Equally ill-conceived plant closing legislation failed to win approval in the 99th Congress after a thirteen year effort to bring such legislation to a vote. But the House of Representatives, in its wisdom, did not approve H.R. 1616 and was totally divided on the issue of how best to assist the dislocated worker. It is unfortunate that today's debate continues to focus on punitive sanctions against employers rather than on meaningful assistance for the affected workers.

TASK FORCE ON ECONOMIC ADJUSTMENT AND WORKER DISLOCATION

Rather than acting in an uninformed manner, Congress and Secretary of Labor William Brock decided that worker dislocation issues needed closer study. Much to his credit and that of Representatives Jim Jeffords, Marge Roukema and Steve Gunderson, Secretary Brock established the Task Force on Economic Adjustment and Worker Dislocation. The Task Force brought representatives from business, labor organizations, academia and state and local governments together in a pioneer project to exchange ideas and discuss, in detail, issues confronting all such groups as they deal with the consequences of economic readjustment. The Task Force issued its findings in a January 1987 report entitled Economic Adjustment and Worker Dislocation in a Competitive Society (Report). The Report is a product of a year-long study and represents a consensus whereby all participants except one were in general agreement on the major thrust of its contents.

Summarizing briefly, the Report recommended that existing assistance programs under the Job Training Partnership Act and the Trade Adjustment Assistance Act be blended into a more efficient system under the Department of Labor's guidance but administered by the states. Most notably, the Report did not recommend mandatory advance notice and consultation, recognizing that advance notice "is not possible in all situations". It did conclude that in the face of strong domestic and international competition, voluntary business participation in worker dislocation programs should be encouraged.

The NAM commends this positive approach to streamlining existing programs and will work with Secretary Brock and the Congress to advance constructive legislative approaches. While we do not support Title II, other sections of S. 538 do contain valuable adjustment assistance programs which should be considered. And we support the similar concepts that are contained in "Subtitle C - Worker Readjustment Act" of the Administration's bill, S. 539.

PROVISIONS OF S.538, TITLES I AND III

Change is an inevitable and integral part of the nation's efforts to promote and maintain strong, self-sustaining, non-inflationary growth. In the past, that change was slower, and in some ways, more manageable. Today, however, intense world competition and rapid technological advancements create a scope and velocity of change that is unprecedented in our history.

It is time to squarely face the competitive challenges in the decades ahead and to firmly grasp the opportunities available for economic growth, an increased standard of living, and enhanced quality of life.

A commitment, a true national commitment to competitiveness, is essential to our ability to profit from change. The NAM fully understands that the elements of that commitment are going to be debated -- that methods may vary and that ideologies will clash. In one area, however, there appears to be universal agreement -- that true competitiveness requires a commitment to human resources.

Recently, the NAM Board of Directors adopted policy, "A Competitive Workforce in a Global Economy," that outlines that commitment to creating and maintaining an educated and skilled workforce capable of meeting today's and tomorrow's challenges.

A critically important element is the development of approaches that minimize the adverse impacts of change and facilitate adjustment. It is especially heartening to note that, in general, the proposals for worker readjustment follow the recommendations reached by the representatives of labor, business, academia, and government who labored for a year on the Brock Task Force to reach a consensus. We commend Senators Metzenbaum, Simon and Kennedy for recognizing that consensus in the bill before us today.

NAM believes that a competent, versatile, systematic and voluntary approach to readjustment is of great importance to the country and has identified key elements that we believe would characterize the best approach: cost effectiveness, broad coverage, easy access, simplicity, limited red tape, individual choice, flexibility and linkages with existing programs. NAM also feels that to be more effective, public education programs and private sector readjustment efforts should be coordinated.

Title I of S. 538 meets many of these criteria and most importantly, emphasizes reemployment and moves beyond the immediate income replacement needs of dislocated workers. Title I provides for on-site availability of programs, versatility in use of funds where most needed and flexibility in coordinating public and private sector efforts -- all components that help ease the difficulties of adjustment and facilitate rapid reemployment.

In addition, incentives to encourage employees to reenter the job market are provided through continuing eligibility for unemployment compensation benefits for individuals attending recognized education and training programs under Title I, and through funds provided for support services such as child care, commuting assistance and financial and personal counseling. Valuable services, such as improved labor market information, job search assistance, and relocation assistance are also provided for. In addition, Title I recognizes the importance of basic education and literacy instruction in preparing workers for increasingly demanding job skills.

Title III's provisions for demonstration projects is a practical way to explore the potential of innovative ideas and worth trying.

NAM supports the efforts in Titles I and III of S. 538, but prefers the comprehensiveness of the Trade, Employment and Productivity Act of 1987 proposed by the administration. Specifically, we approve of the Administration's proposals to build upon the successes of private sector linkages through Private Industry Councils, and the coordination and consolidation of existing programs.

Although details and specific provisions may differ, one aspect rings clear throughout the various proposals for worker readjustment assistance: That our human resources are critical to meeting our continuing competitive challenges. NAM is encouraged at this consensus and will work willingly to achieve the best program possible.

PROVISIONS OF S. 538, TITLE II

In the interest of the Subcommittee's time, we will not attempt to address all of the flawed notice and consultation provisions of Title II. Instead, we append to this testimony an analysis of Title II which I prepared at NAM's request. That analysis clearly demonstrates that S. 538's notice and consultation provisions create a web of unrealistic, harmful, and punitive restrictions, as well as technical flaws which, together, make Title II unworkable and unwise. The NAM requests that the attached analysis and correspondence be incorporated into the Committee's record of these proceeding.

We have highlighted in the following what are considered the most problematic of Title II's provisions. These and others are detailed in the addendum.

- o The legislation not only pertains to closings but also layoffs, which occur on a regular basis in manufacturing as part of the normal business cycle. It not only applies to manufacturing facilities, but to construction contractors and subcontractors, railroads, airlines, and even government business enterprises such as recreation facilities, sales concessions, and certain printing operations.
- o A "plant closing or mass layoff" is defined as an employment loss for 50 or more employees "at any site". This could mean smaller layoffs at the employer's several sites which in the aggregate total 50 or more jobs lost.
- o "Notice" would be required beyond the 90 days contained in previous legislative proposals . . . to up to 6 months for closings or layoffs affecting 500 or more workers.

- The notice period may be reduced only if "unforseeable business circumstances prevent" full running of the notice period before layoffs are implemented. The burden of proof, not defined in the bill, will ensure that the criteria will seldom be satisfied.
- Consultation would be required not only with the employee representatives but also with the local government officials. And requirements for state procedures for the selection of employee representatives are ambiguous, confusing, and overlap other federal laws.
- A key feature is the employer's consultation duty. In First National Maintenance Corp. v. NLRB, 452 U.S. 666 (1981), the Supreme Court said an employer must bargain with the union only over the effects of a plant closing. S. 538, in effect, requires an employer to bargain over the actual decision to close. The bill also requires the employer to consult "in good faith for the purpose of agreeing"to alternatives to its "proposal." It will be difficult to demonstrate to a court that the employer consulted in "good faith" with this intent unless the employer does, in fact, agree to an alternative. This section invites abuses which could frustrate any proposal to close or reduce the workforce indefinitely while courts decide "good faith" issues.
- Good faith consultation duties only apply to employers and not to employee representatives or government. Therefore, the others can insist on impractical alternatives without fear of penalty. Clearly, the burden rests with employers and no "good faith" consultation on the part of unions is necessary.
- Failure of employers to meet the consultation requirements provide employee

and government representatives the opportunity to obtain court injunctions to force plants to continue operating, not withstanding substantial losses incurred by employers.

- Good faith consultation requirements include the undefined employer duty to disclose "relevant" information to employee and government representatives without effective confidentiality safeguards.
- Employers who do not comply with all the above will be liable to each employee for back pay, related benefits, fines to local government, attorneys fees, and class actions.
- The rights and remedies under the bill do not preempt state and local plant closing and layoff laws, but rather authorize and even encourage state and local governments to adopt differnet, even stricter requirements.

CONCLUSIONS

As each plant closing and layoff situation is unique, inflexible notice and consultation requirements cannot be met in all cases. The Brock Task Force Report recognized this fact.

Larger companies comply with their labor agreements and provide periods of notice which have been collectively bargained, frequently in excess of 90 days. Smaller firms, more than their larger counterparts, cannot predict their economic outlook months in advance. Large and small manufacturers' operations alike are subject to shifts in cyclical and seasonal employment as part of normal business cycles. Manufacturers only work, in some cases, when there are orders to fill. Others cannot predict whether or for how long they will keep their customers or suppliers, or continue to obtain necessary financing.

Plants close and workers are laid off for many reasons. They include product and plant obsolescence, domestic and foreign competition, changing technologies and consumer preferences, increased costs, sales, mergers and acquisitions, divestiture, government actions such as deregulation, poor business conditions, the loss of a customer or supplier, loss of a government contract and many other reasons.

Small manufacturers, who are most unable to observe a 90 day notice requirement, often expend their greatest efforts merely trying to survive. Premature disclosure of business difficulties due to mandatory advance notice could frighten creditors or suppliers and, thus, accelerate closings when troubled employers might otherwise have had a chance to work out their problems.

These are only a few of the realities of the marketplace and the environment in which U.S. manufacturers and other businesses must compete. We should not forget, however, that the United States is currently experiencing a prolonged economic expansion and continues to generate jobs at a rate envied throughout the world. The U.S. has generated almost 29 milion jobs, a 36% increase, since 1970. There is evidence the economic adjustment problem peaked in the 1981-83 period, and now the situation is improving. In December, for example, manufacturing jobs rose by 31,000, the third monthly increase. In the fourth quarter of 1986, jobs increased at an annual rate of 340,000. At the same time, job losses as a percent of the workforce fell to 3.3 percent, close to normal patterns over the past 20 years.

NAM believes the key to meeting the challenge of structural change and worker dislocation lies not in trying to salvage inefficent operations and retain a jobs status quo, but in generating new job opportunities. Now is not the time to stifle this economic upswing with anti-competitive requirements. Instead, let us focus upon job creation, work to improve our competitiveness, and concentrate on retraining and skills development to prepare workers for change and to get them back to work.

As explained in the foregoing and attached analysis, NAM finds Title II to be a misdirected remedy and one which ultimately will do more harm than good. We remain strongly opposed to the notice and consultation provisions of Title II of S. 538 and urge that they be rejected. On the other hand, we believe the positive, pro-worker recommendations contained in Titles I and III merit careful consideration, and we hope the Subcommittees move forward with those aspects of the bill.

I will be pleased to answer your questions.

ADDENDUM TO THE TESTIMONY

OF JOHN S. IRVING, JR.

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February 25, 1987

Randolph M. Hale
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Dear Randy:

The bill entitled the "Economic Dislocation and Worker Adjustment Assistance Act" was introduced in the Senate by Senator Metzenbaum and a number of Democratic co-sponsors on February 18, 1987. The bill, S.538, contains a variety of dislocated worker training and assistance programs and is promoted by Senator Metzenbaum and other sponsors as a means of helping workers "give the competitive edge back to America."

Title II of S.538 is entitled "Advance Notification and Consultation." This portion of the bill is a finely tuned version of H.R. 1616, a "notice and consultation" bill defeated in the House of Representatives in November of 1985. A press release from Senator Metzenbaum accompanying the bill merely refers to the bill's notice and consultation provisions as requiring plants with more than 50 employees "to give advance notice of plant closing." A summary of the bill by Senator Metzenbaum dated February 17, states that advance notice of closings and layoffs is required "in order to permit the effective deployment of dislocation services before dislocation actually occurs."

The bill itself (Sections 102(b)(1)(A) and (B)) declares that "adjustment efforts" should begin in advance of plant closing or mass layoffs rather than afterward, "thus minimizing disruption in the workers' lives." Advance notice, according to the bill, is required to permit time for "research and planning."

In fact, these relatively bland references to the advance notice and consultation requirements of S.538, do not begin to tell the real story of the bill's notice and consultation requirements or the difficulties they would cause for employers and their ability to compete. Rather than restoring the "competitive edge" to America, the notice and consultation provisions of S.538 virtually guarantee that American employers will become less, not more, competitive.

Despite the statements in the bill itself and by its co-sponsor, Senator Metzenbaum, that advance notice of closings and mass layoffs is needed to permit adjustment efforts, research and planning, and effective deployment of dislocated worker services, the real focus of these provisions is to prevent closings and employee terminations. The bill accomplishes this objective by mandating a lengthy and cumbersome notice and consultation process designed to change employers' minds or to introduce such high risks for employers that they will abandon thoughts of closings or layoffs altogether.

In fact, adjustment efforts, research and planning, and effective deployment of dislocated worker services, are no where mentioned in the bill's notice and consultation provisions. Instead, there are requirements of up to six months notice of closings and layoffs, mandatory procedures for consultation with unions and other employee representatives and local government officials about "alternatives" to the course proposed by the employer, and onerous and detailed information disclosure requirements with which employers must comply. In addition, the bill's notice and consultation requirements create backpay and benefit liabilities for employers, subject them to fines and penalties of local governments, and encourage additional state and local plant closing and layoff restrictions and penalties even more onerous than the proposed Federal restrictions.

A review of the bill itself, unlike the bland statements about its contents, leaves little doubt that employer mind changing and closing and layoff prevention, are the real objectives of the bill's advance notice and consultation requirements. Enormous leverage for preventing terminations is bestowed upon unions and local governments. Management objections to similar notice and consultation provisions of earlier bills, notably the defeated H.R. 1616, have been largely ignored.

Labor and management coexist within the delicate balance struck by the Federal labor laws. When that balance is fundamentally upset, serious consequences for management, labor and the public, inevitably result. The plant closing and layoff restrictions of S.538 interfere with that balance in many obvious ways. Clearly unions, not employers, are the intended beneficiaries of that interference in the case of the notice and consultation provisions of S.538. Far from promoting labor-management cooperation, those provisions virtually assure new labor-management confrontations and prolonged legal battles. Even the legislative debate over these proposed restrictions promises to polarize labor and management and will be more destructive of labor-management cooperation than any debate since the defeat of "Labor Law Reform" in 1978.

In short, the bill contains overly restrictive plant closing and layoff requirements, and glaring conceptual, procedural and mechanical flaws, which render its notice and consultation provisions unwise and unworkable. As a consequence, the business community should vigorously oppose their enactment. To do otherwise is to jeopardize any competitive edge American businesses currently enjoy, and, in the long run, the jobs of American workers.

In reviewing the advance notice and consultation provisions of S.538, I have prepared comments on the bill's more objectionable and destructive requirements. Those comments are enclosed for your review.

Sincerely,

John S. Irving
NAM Special Counsel,
Plant Closing Matters

A Management Review of Title II of S.538, the "Economic Dislocation and Worker Adjustment Assistance Act"

TITLE II - ADVANCE NOTIFICATION AND CONSULTATION

SEC. 201. DEFINITIONS.

As used in this title --

(1) the term "employer" means any business enterprise that employs --

(A) 50 or more full-time employees; or

(B) 50 or more employees who in the aggregate work at least 2,000 hours per week (exclusive of hours of overtime);

Comments:

This definition of "employer" includes private sector employers covered by the National Labor Relations Act, including construction employers. It also includes railroads, airlines and "business enterprises" of state, local, and perhaps even the federal, governments.

Since the term "employee" is not defined, managers and supervisors also would be considered "employees." Thus, an employer of 40 hourly employees and 10 managers and supervisors would be covered. Therefore, employers of fewer than 50 "employees," in the usual sense, are covered.

(2) the term "plant closing or mass layoff" means an employment loss for 50 or more employees of an employer at any site during any 30-day period;

(3) the term "employment loss" means (A) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (B) a layoff of indefinite duration, (C) a layoff of definite duration exceeding 6-months, or (D) a reduction in hours of work of more than 50 percent during any 6-month period;

Comments:

In the sale of a plant (e.g., an assets sale), employees are normally "terminated" by the seller. Such a sale, therefore, may result in an "employment loss" and trigger the bill's notice and consultation requirements, even if all of the seller's employees were hired by the buyer. An employer of 500 or more employees could be required to give 180 days advance notice of a sale; an employer of 100 employees, 90 days notice; and an employer of more than 100 and less then 500 employees, 120 days notice. The prospective seller could then be required to consult in good faith with unions or employee representatives and public officials during the notice period "for the purpose of agreeing" to alternatives other than a sale.

The notice and consultation requirements are triggered by an employment loss at any site. 1/ A covered employer could be required to give notice and consult if its actions would cause an employment loss on any site, even if the affected employees were employed by another employer. For instance, a covered general contractor (i.e., an "employer") who intends to terminate a subcontractor (i.e., another "employer") on a construction site would have to give notice and consult if the contractor's action would result in termination of 50 or more "employees" of the terminated subcontractor. The covered subcontractor also would be required to give notice and consult. The same requirements also could apply to covered "employer" customers and suppliers seeking to terminate business relationships with one another.

1/ Section 205(c) authorizes private lawsuits against employers for backpay and lost benefits resulting from the failure to notify, consult, or disclose relevant information. Where there is or will be an employment loss of two or more groups of less than 50 employees, which in the aggregate equal or exceed 50 employees, it is the employer's burden to "demonstrate" (i.e., prove), that losses by the separate groups (e.g., at different locations), resulted from "separate distinct actions and causes and are not an attempt by the employer to evade the requirements of this Act." Therefore, employers can expect lawsuits even though job losses at any particular site do not exceed 50 employees.

Layoffs of definite duration are covered if layoffs exceed 6 months. However, all layoffs of 50 or more employees for an "indefinite duration" require advance notice and consultation. Thus, a covered employer who wishes to layoff 50 or more employees for less than 6 months must announce a definite reemployment date or be prepared to give advance notice and consult. If a definite recall date is given within 6 months (e.g., 4 months hence) and laid off employees are not recalled on that date, the employer may be liable for backpay and penalized by fines because, after all, the layoff turned out to be "indefinite." No specific exceptions are made for industries like the construction industry where workforces and work hours on larger projects expand and contract with frequency.

(4) the term "affected employees" means employees who have been employed by an employer for more than 6 months and who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff;

Comments:

The bill's notice and consultation provisions are triggered when 50 or more "employees" will lose employment at any site during a 30-day period. However, only unions and representatives of "affected employees" must be given notice. Likewise, consultation is with unions and representatives of "affected employees," i.e., those employed by an employer for more than six months. Therefore, if 20 employees with less than 6 months employment and 30 employees with 6 months or more employment are to be terminated or laid off, an employer apparently only need give notice and consult with respect to the 30 longer-term employees.

Another possible interpretation of the bill is that "affected employees" means those who have been employed for at least six months by any employer. The bill states that "affected employees" are those employed by "an employer" who may reasonably expect to experience an employment loss. It does not say that their 6 months or more of employment must be with the employer who proposes to lay them off. Thus, such affected employees would be entitled to notice and consultation rights if employed by a number of employers for a total of six months or more even if employed by the employer proposing to lay them off for only one day.

These ambiguities are examples of poor draftsmanship and lack of specificity which would cause enormous compliance uncertainties for employers and generate costly burdens for them and for courts. In the meantime, employers wishing to layoff employees for legitimate economic reasons will be stymied in their efforts or, perhaps as intended, will abandon their layoff plans altogether.

Another serious uncertainty is caused by the term "affected employee." It means not only employees actually affected, but also those "who may reasonably be expected" to experience an employment loss resulting from a proposed plant closing or mass layoff. Employers, naturally, will tend to err on the side of giving notice to larger groups of employees in order to avoid skipping those who later may turn out to be "affected." However, if the employer overestimates, it could wind up consulting with representatives of groups improperly diluted by unaffected employees and, thus, may consult with representatives of the wrong groups. Uncertainties created when different representatives claim to represent competing groups of "affected employees" will lead to mass confusion over who represents whom. Again, the employer will be discouraged from doing anything at all, or if he acts, may face stiff fines and backpay penalties and see what is left of anticipated savings consumed by attorney's fees.

(3) the term "representative" means --

(A) an exclusive representative of employees as determined under the National Labor Relations Act (29 U.S.C. 141 et seq.) or under the Railway Labor Act (45 U.S.C. 151 et seq.); or

(B) in the case of employees not so represented, any person elected by employees to represent them for purposes of the notice or consultation requirement under sections 202 and 203;

Comments:

Representative means "exclusive representative of employees as determined" under the NLRA or RLA. It is unclear whether this means "certified" representative or a representative "designated" by union authorization cards, or a designated representative seeking to establish exclusive representative status through, for instance, an NLRB election or bargaining order. What if an employer proposes to close during a union organizational drive, but before a scheduled NLRB election or certification? Must the notice and consultation process await the outcome of the NLRB election? What if the results of that election are challenged?

If there is no "representative," one is to be chosen under Section 203(c) through an "expedited" state proceeding. Where no representative has been chosen because an NLRB election proceeding is incomplete, it appears that state "expedited" selection procedures would take over, perhaps in mid-stream.

While the entire representative selection process is going on (federal and/or state) there will be uncertainty about who should receive notice, and the consultation process will be delayed while representatives of "affected employees," or "reasonably" affected employees are being selected, or differences among competing groups of affected employees are being resolved by the NLRB, state authorities, or both. In the meantime, the employer has no idea with whom he should be consulting, whether he should be consulting at all, or what will happen if he fails to consult with someone. The bill's substantial fine and backpay penalty provisions can be costly for the employer who makes mistakes. While representational issues are being sorted out, business opportunities, including sales, will be lost and business losses will result because employers will be afraid to take needed action.

These and other uncertainties appear consciously built into the bill to dissuade employers from taking any actions at all with respect to layoffs. Lawyers will benefit, the courts will be burdened, business owners will suffer from inability to respond to business needs, and owners, creditors, consumers, customers, suppliers, and employees, will be the losers in the long run.

Apparently unwittingly, the bill's sponsors have created a notice and consultation process which exposes unions to enormous liabilities. Under the bill, unions are required to consult as representatives of "affected employees," i.e. employees employed for six months or more. Under the NLRA and the RLA, unions owe a statutory "duty of fair representation" to all employees in the bargaining unit, including those employed for less than 6 months. If a union consulting during the notice period on behalf of "affected employees" proposes "alternatives" which harm other unit employees with less than 6 months employment, the Union will be placed in an impossible conflict-of-interest situation and will be exposed to law suits for breach of the statutory duty of fair representation.

Unions face the same conflicts of interest and liability exposure if they fail to represent "affected employees" with a single-minded purpose despite adverse effects upon "unaffected employees" whom they also represent, i.e., those employed for less than 6 months. Similar conflicts will arise where, for instance, a union represents employees at two plants of the same employer, one which will lose work and jobs because of a proposed work relocation and the other which stands to benefit from the acquisition of relocated work. The interests of employees at the two locations will be in conflict, and the union with fiduciary responsibilities to both employee groups will be caught in the middle. Even where unions in good faith attempt to balance interests of competing employee groups, the costs of defending duty of fair representation lawsuits will be enormous.

(6) the term "Secretary" means the Secretary of Labor;

(7) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States; and

(8) the term "unit of local government" means any general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers.

SEC. 202. NOTICE REQUIRED BEFORE PLANT CLOSINGS AND MASS LAYOFFS.

(a) Notice To Employees, State Dislocated Worker Units, And Local Governments -- An employer shall not order a plant closing or mass layoff until the end of a period specified under subsection (b) after the employer serves written notice of a proposal to issue such an order --

(1) to the representative or representatives of the affected employees with respect to such order or, if there is no such representative, to each affected employee with respect to such order; and

> (2) to the State dislocated worker unit (established under the title I) and the unit of local government within which such closing or layoff is to occur.

Comments:

A notice of plant closing or layoff must not be framed as an "order" but, rather, as a written notice of a "proposal" to issue such an order.

By requiring pre-decisional notice and consultations over plant closings and layoffs, Title II of S.538 is designed to overrule the Supreme Court's 1981 decision in First National Maintenance Corp.. v. NLRB, 452 U.S. 666. In that case the Court held that an employer is not obligated to bargain over an economically motivated decision to close part of its business, but is required to bargain concerning the effects of that decision. Speaking for seven Justices, the majority opinion of Justice Blackmun states that a decision to partially close has its focus on economic profitability, "a concern under these facts wholly apart from the employment relationship . . . involving a change in the scope and direction of the enterprise, [which] is akin to the decision whether to be in business at all . . ." 452 U.S. at 677:

> Management must be free from the constraints of the bargaining process to the extent essential for the running of a profitable business. It also must have some degree of certainty beforehand as to when it may proceed to reach decisions without fear of later evaluations labeling its conduct an unfair labor practice."

452 U.S. at 678-679.

It is clear that S.538 requires notice of a "proposal" to layoff employees or close plants at the predecisional stage. Similarly, "good faith" consultations must be conducted at this pre-decisional state, i.e., before any "order" of layoffs or closing is issued. Obviously, such requirements are intended to reverse the Court's First National Maintenance holding. There is little practical difference between good faith "consultations" under the bill, and good faith "bargaining" under the NLRA. It also is clear that proposals to layoff employees or close plants are required subjects for notice and consultation whether or not those proposals are related in any way to labor costs. Thus, pre-decisional notice and consultations are required even in the case of fundamental business judgments like the discontinuation of an obsolete product line, as long as those judgments may result in plant closings or layoffs. These are precisely the kinds of judgments which the Supreme Court concluded "must be free from the constraints of the bargaining process to the extent essential for the running of a profitable business." 452 U.S. at 678-679. The Court's practical observation, therefore, would be nullified by Title II of S.538.

The employer must "serve" notice upon the "representative or representatives" of affected employees or upon each affected employee "if there is no such representative." These notice requirements raise all of the same problems of determining the identity of the proper "affected employee" group and their "representative or representatives" as discussed above.

Notice also must be served upon the state "dislocated worker unit" and "the unit of local government within which such closing is to occur." The unit of local government to which the employer is to send notice and required information, and with which the employer must "consult," is the "unit of local government having jurisdiction over the area in which the employer is located and if there is more than one such unit, the unit of local government to which the employer pays the highest taxes for the year preceding the year for which the determination is made." (Section 205(a)(2)(B)).

The "proposing" employer's decisions with respect to who gets notice had better be correct. If not, notice will be ineffective, and the employer will be required to return to square one or will be subject to the bill's penalties.

(b) NOTICE PERIODS. -- For purposes of subsection (a), the periods described in this subsection shall be --

> (1) a 90-day period in the case of a proposed plant closing or mass layoff involving not fewer than 50 nor more than 100 affected employees;

(2) a 120-day period in the case of a plant closing or mass layoff involving more than 100 but fewer than 500 affected employees; and

(3) a 180-day period in the case of a plant closing or mass layoff involving 500 more affected employees.

Comments:

During these extended notice periods, up to 6 months, employers will lose customers and suppliers, as well as skilled employees who will take the other jobs without waiting for the results of "consultations." Even if consultation persuades the employer to abandon its layoff or closing plan, the business will be severely handicapped by these losses.

(c) Reduction Of Notification Period. -- An employer may order a plant closing or mass layoff before the conclusion of the applicable period described in subsection (b), if unforeseeable business circumstances prevent the employer from withholding such closing or layoff until the end of such period.

Comments:

This notice reduction provision at first glance appears to provide relief from extended notice requirements when warranted by business necessity. 2/ However, closer examination reveals that relief, at least for employers, is neither the intention nor the effect of this provision.

First, business circumstances must actually "prevent" the employer from delaying the closing or layoff order until the end of the full notice period. Second, such circumstances must, in fact, be "unforeseeable." Employers seeking to shorten the notice period obviously will be running great risks. They may succeed in clear cases where, for instance, an entire plant has been destroyed by fire. Employers may not succeed in shortening the period, however, where their financial

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2/ Senator Metzenbaum's summary of S.538 dated February 17, 1987, states: "An exception is provided in cases of unforeseeable business necessity."

resources or the resources of their parent companies would permit postponement of the closing or layoff order for the entire notice period. Even if waiting would mean financial ruin, it could be argued that ruin was "foreseeable" and that the notice, therefore, should have been given earlier.

Again, the employer had better be "right," given the substantial liabilities and penalties authorized by the bill. This escape clause may provide no escape at all, and its ambiguity is likely to discourage its use altogether.

SEC. 203. CONSULTATION REQUIRED BEFORE PLANT CLOSINGS AND MASS LAYOFFS.

(a) Consultation During Notification Period. -- An employer shall not order a plant closing or mass layoff unless the employer upon request of the representatives of the unit of local government or of the affected employees, as the case may be --

(1) has met at reasonable times with the representative or representatives (if any) of the affected employees and the unit of local government with respect to a proposal to order a plant closing or mass layoff; and

(2) has consulted in good faith with such representative or representatives for the purpose of agreeing to a mutually satisfactory alternative to or modification of such proposal, but this requirement to consult shall not compel an employer to agree to such an alternative or modification.

Comments:

This is one of the trickiest and most objectionable provisions in the entire bill. The "proposing" employer must meet with representatives of employees and local governments at "reasonable times" and consult in "good faith." This may sound innocuous, but it is not.

A closing or layoff will be unlawful and will result in substantial employer liabilities and penalties unless employers can prove that they have consulted "in good faith." And that is not all. Employers must prove that they have consulted in good faith "for the purpose of agreeing" to alternatives to the very actions they propose to take.

Literally thousands of NLRB cases over the years have centered upon the issue of whether employers have bargained in "good faith." When litigated, these cases are lengthy and costly for the employer and the public. Has the employer entered bargaining with a "locked mind" and with "no intention of reaching an agreement?" Has he engaged in "surface bargaining?" Was the employer's offer the kind that "no self-respecting union" could accept? Did he insist to impasse on "non-mandatory" bargaining subjects? Did the employer withhold information which the union needed in bargaining? Did he commit other unfair labor practices during bargaining which demonstrate that his bargaining was in "bad faith?"

These are but a few of the theories which have embroiled employers in NLRA litigation about the duty to bargain in "good faith." This bill contains the additional onerous requirement that employer good faith consultations be "for the purpose of agreeing" to alternatives to the proposed closing or layoff. Employers will be unable to prove that they consulted in "good faith" unless they also can prove they approached consultations for the purpose of "agreeing" to alternatives they rejected during their planning processes.

Thus, to the untrained ear this consultation provision may sound deceptively benign. To any ear trained in labor relations matters, however, the "good faith" consultation requirement is an artfully worded trap for employers. It can only be concluded that this trap was intended -- a trap which, like others contained in the bill, will discourage employers from resorting to closings and layoffs at all. The good faith consultation requirement has little to do with making employers more competitive.

It is true that the provision contains some vague assurances: Good faith consultation is for the purpose of agreeing "to a mutually satisfactory" alternative, and the "requirement to consult shall not compel an employer to agree to such an alternative or modification." However, such vague assurances are little comfort to employers who will put to the subjective proof that they consulted in good faith "for the purpose of agreeing" to mutually acceptable alternatives. In fact, thousands of NLRB cases dealing with good faith bargaining issues have been generated in spite of the same assurances. Under the NLRA, collectively bargained agreements must be "mutually acceptable" too, and Section 8(d) of the NLRA "does not compel either party to agree" either.

(b) Duration Of Consultation Requirement. -- An employer's obligation to consult as required by subsection (a) of this section commences on the date such employer serves the notice required by section 202(a) and continues until the end of the applicable period described in section 202(b), unless earlier terminated with the consent of the employer and the representative or representatives of the affected employees and the unit of local government.

Comments:

The consultation obligation continues throughout the entire notice period. Thus, unlike the NLRA, the concept of "impasse" is excluded from the consultation requirements of S.538. An employer must continue to meet and consult with representatives of various employee and governmental groups until the very last day of the notice period -- whether or not those representatives have any constructive alternatives to offer. And, throughout the notice period, the employer must convincingly consult "for the purpose of agreeing" to alternatives. If an employer even suggests, as he is permitted to do under the NLRA, that consultations appear to have reached impasse, he may be unable to prove later that he consulted in good faith throughout the entire notice period.

Consultations will be with representatives of one or more employee groups and with governmental representatives simultaneously. Nevertheless, the employer must be prepared to consult with any and all of these representatives at whatever "reasonable times" they request throughout the notice period. One can imagine the mass confusion, and exhaustion, which will result, particularly toward the end of the notice period when union and government representatives finally begin lowering their consultation demands.

The provision which allows the consultation period to be shortened by mutual agreement between the employer and various employee and governmental representatives is of little practical value. It requires that all the representatives agree with one another and the employer and, therefore, is unlikely to come into play unless the employer has capitulated to the demands of all representatives.

(c) **Expedited Selection Of Representation For Employees Not Otherwise Represented. -- Each State dislocated worker unit shall establish, for purposes of the consultation requirement under subsection (a)(2), expedited procedures for the selection of representation by employees not otherwise represented by an exclusive representative of employees as determined under the National Labor Relations Act (29 U.S.C. 141 et seq.) or the Railway Labor Act (45 U.S.C. 151 et seq.).**

Comments:

When employees are not union represented "as determined" under the NLRA or RLA, expedited state "procedures" will be established "for the selection of representation by employees." It should be noted that these state procedures are not legislated, but rather are formulated by each "State dislocated worker unit." The governor of each state will "designate or create" such "units." (Section 105(a)(1)).

Obviously, then, the powers of state "dislocated worker units" will be considerable, especially since they will be deciding questions of employee representation. How representation disputes will be resolved, as described earlier, is guesswork, as are questions of whether unions may apply for selection and what will happen if the NLRB is mid-stream in its own procedures for the selection of an exclusive bargaining representative.

Accordingly, the entire state expedited selection procedure is fraught with potential contradictions and uncertainties apparently left by the bill's drafters to the parties and the courts to figure out. In the meantime, however, the confusion inherent in these selection procedures will act as a deterrent to terminations and layoffs by employers caught between business exigencies and the financial penalties and lawsuits authorized by the bill.

SEC. 204. DUTY TO DISCLOSE INFORMATION DURING CONSULTATION.

(a) General. -- (1) An employer's duty to consult in good faith under section 203 shall include the duty to provide in a timely fashion, if requested by the representative of the affected employees or the unit of local government concerned, such relevant information as is necessary for the thorough evaluation of the proposal to order a plant closing or mass layoff or for the thorough evaluation of any alternatives or modifications suggested to such proposal.

(2) The information referred to in paragraph (1) shall include --

(A) the reasons and basis for the decision to order a plant closing or mass layoff;

(B) alternatives that were considered and the reasons the alternatives were rejected;

(C) plans with respect to relocating the work of the facility where employment loss is to occur;

(D) plans with respect to the disposition of capital assets; and

(E) estimates of anticipated closing costs.

Comments:

The entire information disclosure section of S.538 is another calculated trap for employers. The bill requires the disclosure of information, and the duty to disclose information is included specifically as an element of the employer's "duty to consult in good faith." In other words, an employer fails to comply with the duty to consult if he fails to supply all "relevant" information requested by unions or other employee or local government representatives. A failure to supply but one "relevant" document could result in a court determination years later that the employer failed to consult in good faith, with accompanying fines, penalties, and backpay liability.

Such cases under the NLRA are commonplace. Unions routinely use information requests as a bargaining tactic. If they make a broad enough information request, and an employer is mistaken in its belief that the information need not be disclosed, the employer's otherwise good faith bargaining is "tainted" by its "bad faith" refusal to supply information. The refusal to disclose invalidates a good faith bargaining impasse which allows an employer to implement unilaterally its last bargaining offer. An unlawful refusal to supply information converts an "economic strike" into an "unfair labor practice" strike which, in turn, guarantees that strikers will be entitled to displace striker replacements when they decide to end their strike and return to work.

There is ample room for the same tactics during the good faith consultations required by S.538. Unions and other representatives will demand greater and greater access to employer books, records, internal memoranda, studies, and the like. The same demands will be made upon the employer's parent company if one exists. If the employer or its parent refuses or fails to supply some piece of arguably relevant information, the entire consultation process could be tainted and any closing or layoff which follows would be unlawful.

The employer must supply all relevant information necessary for a "thorough evaluation" of the proposed layoff or closing. In addition, however, the employer must supply all relevant information necessary for a thorough evaluation "of any alternatives or modifications suggested" by any employee (union) or government representatives. "Suggested" alternatives need not be "reasonable," and it makes no difference if those "alternatives" are completely unacceptable to the employer. By merely "suggesting" new alternatives, employee and government representatives can require employers to embark on a new hunt for all information relevant to a "thorough evaluation" of that "alternative." One can only imagine the employer frustration and wasted resources these tactical requests will generate. But if the employer fails to comply, it will be exposing itself to fines, liabilities, and lawsuits for failing to consult in "good faith."

The bill includes examples of information deemed relevant and which therefore must be produced. The list is only illustrative, and the outside limits of "relevant" information will be limited, as a practical matter, only by the imaginations of union and representatives' attorneys in formulating discovery demands. Accountant and consultant reports dealing with a proposed layoff or closing, as well as information about other alternatives already studied and rejected by the employer, may be relevant and therefore disclosable. It is not even clear that the attorney-client privilege would insulate advice obtained by the employer from its attorneys concerning the proposed layoff or closing.

(b) Prevention Of Public Disclosure Of Competitive Information. -- The information an employer discloses to an employee representative or unit of local government under subsection (a) shall be subject to such protective orders as the Secretary may issue, on petition by the employer, to prevent the disclosure of information by such representative or any employee which could compromise the position of the employer with respect to its competitors.

An employer may petition the Secretary of Labor for a "protective order" to prevent disclosure of information by a union or other employee representative or by a local government, which could compromise the position of the employer with respect to its competitors. What happens while the employer is applying to the Secretary for such an order is unclear. This whole "petition" process is uncertain. The Secretary may or may not "issue" the protective order and will have to determine its scope. While the Secretary is deciding what to do, it is not clear whether the employer may withhold the requested information. If not, what happens if the information is made public before the Secretary acts? If the employer withholds information pending action by the Secretary, what happens with respect to the notice and consultation period? Does it keep running or is it suspended? The bill gives no guidance on such issues and, as a result, adds substantial uncertainties to the entire process for the employer -- another incentive for the employer to abandon its "proposed" course of action.

To add to the difficulty, it is not clear whether the Secretary actually issues the protective order or whether the Secretary must apply to a court for such an order. If the Secretary issues the order, it would still have to be enforced by a court. If the Secretary has to go to court after deciding on an appropriate protective order, the entire process could take weeks, particularly if "representatives" challenge the scope of the order -- and so on. In reality, then, this provision provides little assistance to employers with respect to the "prevention of public disclosure of competitive information."

SEC. 205

(b) CIVIL ACTION AGAINST EMPLOYEES OR REPRESENTATIVES OF EMPLOYEES. -- Any employee or representative of affected employees who violates a protective order

issued by the Secretary under section 204(b) shall be liable to the employer for the financial loss suffered by the employer as a consequence of such violation. Action to recover such liability may be maintained in any United States court of competent jurisdiction.

Comments:

This section of the bill appears to provide a remedy in the event an employee or representative discloses information in violation of the Secretary's protective order. In actuality, the provision is a remedy limitation. Recovery is only for actual loss which an employer can prove it suffered as a consequence of the prohibited disclosure. This "remedy" provision also may be a limitation because it is arguably the exclusive remedy for unauthorized disclosure. It therefore may foreclose injunctions prohibiting disclosure. It goes without saying that recovery against an employee for unauthorized disclosure would most often amount to a Pyrrhic victory.

SEC. 205. ADMINISTRATION AND ENFORCEMENT OF REQUIREMENTS.

(a) Civil Actions Against Employers. -- (1) Any employer who orders a plant closing or mass layoff in violation of section 202, 203, or 204 of this Act shall be liable to each employee who suffers an employment loss as a result of such closing or layoff for --

(A) back pay for each day of violation at a rate of compensation not less than the higher of --

(i) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(ii) the final regular rate received by such employee, and

(B) the cost of related benefits, including the cost of medical expenses incurred during the employment loss which would have been covered under medical benefits if the employment loss had not occurred.

Comments:

It is clear from this section that compensation for backpay and other lost benefits may be assessed for an employer's failure to give notice, failure to consult in good faith, or failure to supply relevant information. The employer is liable to each employee laid off as a result of any closing or layoff occurring after the employer's failure to perform each of these three duties.

It is the closing or layoff itself which is tainted, and liability is not limited to employees who can show harm caused by the employer's lack of compliance. Rather, all employees laid off or terminated are entitled to recover. Thus, if an employer notifies some "affected employees" but fails to notify others, all employees suffering employment loss by virtue of the "tainted" layoff or closing are entitled to recover, even those with whom the employer actually consulted in good faith.

It also appears that recovery for back pay and benefit losses is not mitigated by employee interim earnings and neither is there any requirement that affected employees mitigate damages. Loss of employment "as a result of such closing or layoff" appears to be all that is required for recovery.

Employees are entitled to recover against the employer for "related benefits" too, and not just backpay. "Related benefits" specifically includes costs of medical expenses.

(2)(A) Each employer who violates the provision of section 202, 203, or 204 with respect to a unit of local government shall be subject to a civil penalty equal to $500 for each day of such violation.

Comments:

The local government may recover a penalty or fine from the employer of $500 for each day the employer fails to comply with the bill's notice requirements, the duty to consult in "good faith," or the obligation to supply information. It may even be that this fine can be levied for each day within the notice period that the employer fails to disclose relevant information.

(B) The unit of local government which the employer must notify, consult with and provide information to, in accordance with sections 202, 203, and 204, is the unit of local government having jurisdiction over the area in which the employer is located and if there is more than one such unit, the unit of local government to which the employer pays the highest taxes for the year preceding the year for which the determination is made.

Comments:

Section 205(a)(2)(B) is discussed above at page 8.

(3) A person seeking to enforce such liability (including a representative of employees (or a unit of local government) may sue either for himself or for other persons similarly situated, or both, in any district court of the United States for any district in which the violation is alleged to have occurred, or in which the employer transacts business.

(4) In any such suit, the court may, in addition to any judgment awarded the plaintiff or plaintiffs, allow a reasonable attorneys' fee to be paid by the defendant, together with the costs of the action.

Any "person" may sue the employer, not just employees' unions or other representatives. This leaves open the possibility that suits may be brought by employees or by strangers on their behalf, even if unions or other employee representatives do not sue. A state or local government could bring such a suit, as could complete outsiders or newcomers such as "public interest" groups or law firms. Provisions for attorneys fees and costs will encourage litigation.

(b) Civil Action Against Employees or Representatives of Employees is discussed above at p. 16.

(c) Determinations With Respect To Employment Loss. -- For purposes of this section, in determining whether a plant closing or permanent layoff has occurred or will occur, employment losses for two or more groups, each of which is less than 50 employees but which in the aggregate equal or exceed 50 employees, occurring within any 90-day period shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and

are not an attempt by the employer to evade the requirements of this Act.

Comments:

This section encourages lawsuits against employers to recover awards for backpay, lost benefits, attorneys' fees, and costs, where fewer than 50 employees are laid off at, for instance, separate sites, but where the aggregate employment loss exceeds 49 jobs. The burden of proving that the losses resulted from "separate and distinct actions and causes" is placed on the employer, not the plaintiff. The employer, then, is guilty until he proves he is innocent. Thus, even though fewer than 50 jobs will be lost at any particular site, an employer will be required to evaluate prospective job losses at other facilities and whether the employer's burden can be sustained in the event of a lawsuit. This provision will make life interesting for construction employers in particular, where for instance, layoffs are required at different sites due to the same "cause," i.e., winter weather. It will be interesting to see what "alternatives" unions and government representatives will devise.

SEC. 206. PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.

The rights and remedies provided to employees by this title are in addition to, and not in lieu of, any other contractual, statutory, or other legal rights and remedies of the employees, and are not intended to alter or affect rights and remedies available under existing laws.

Comments:

This is one of the most harmful and dangerous provisions of S.538. Section 206 makes clear that the bill's requirements are not exclusive and do not preempt state and local plant closing and layoff laws. In fact, the effect is to encourage states, counties, cities, and towns to enact their own laws and rules which are invited by the bill to be even stricter and more cumbersome and harmful to employers than S.538. For instance, a state may require one or two years of layoff notice for all employers within its borders. The language of the bill may even authorize state and local laws requiring employer-paid severance pay or other employee termination benefits. Additional state and local "penalties" can be expected too.

Until now, state and local jurisdictions have been cautious about enacting plant closing legislation because of the likelihood that it would be declared invalid under the Supremacy Clause of the Constitution and preempted by Federal labor laws. Section 206 of S.538 is a clear attempt to authorize and encourage state and local action. If S.538 becomes law, it is inevitable that employers will be faced with a tangle of federal, state, and local plant closing and layoff requirements, penalties and injunctions. The net effect will discourage closings and layoffs, including sales, with the result that U.S. employers can expect to become less, not more, competitive.

Even employers who feel that they can or already do comply with the notice and consultation requirements of S.538 will, and should be, alarmed by the bill's anti-preemption provisions. If the bill becomes law, these employers too will become entangled in state and local plant closing requirements deliberately fashioned to keep them in their places.

SEC. 207. **PROCEDURES ENCOURAGED WHERE NOT REQUIRED.**

It is the sense of Congress that an employer who is not required to comply with the notice and consultation and information requirements of sections 202, 203, and 204 should, to the extent possible, provide notice to its employees about a proposal to close a plant or permanently reduce its workforce.

Comments:

The legal effect of this "sense of Congress" provision is not clear. It could lead, however, to determinations by the NLRB that employers violate the NLRA obligation to bargain in good faith when they do less than S.538 requires in closing and layoff situations. That is, in deciding, for instance, whether an employer has complied with its obligation under the NLRA to bargain in connection with the effects of a closing, the NLRB may take into account the "sense of Congress" that all employers should provide 90 to 180 days advance notice.

Also, this section read together with Section 207 would authorize and encourage states and localities to enact notice and consultation laws covering employers who are not subject to Title II of S.538.

SEC. 358. EFFECTIVE DATES.

This title shall take effect on the date which is 6 months after the date of the enactment of this Act.

SEC. 208. EFFECTIVE DATES.

This title shall take effect on the date which is 6 months after the date of the enactment of this Act.

Senator SIMON. Thank you very much.

You mentioned the Canadian law, Mr. Irving. The people who belong to NAM, have you had an adverse experience with plants of your members with closing laws in Canada, France, West Germany, UK, Japan and Sweden?

Mr. Irving. We would like to get you the specific information on that, Senator. I do not have any particular study today, but I think that is a relevant question, and I know that the NAM would be happy to supply you with information on that.

I think Mr. Johnston may want to add some remarks to that.

Senator SIMON. I would be interested. But as far as you know, there is not a pattern of any great difficulty on the part of your membership in these countries?

Mr. IRVING. As far as I know, but that does not mean that a problem is lacking. I simply have not investigated that, and the NAM may well have investigated it.

I would add that the focus of the Canadian bill is on providing training and providing retraining and adjustment assistance to employees. There is no provision in the Canadian bill which is a counterpart to this one for good faith consultations and the supplying of information and the kinds of lawsuits that would spring from those kinds of consultation provisions. The focus is on assisting employees and adjustment assistance and training and not on good faith consultations and the kinds of legal problems that that would cause.

Honestly, I believe that if Title II were enacted the way it is, those that would—and this is against my interest to say it—but I do think the ones that would benefit most would be the lawyers. I think that it is indeed a full employment title for lawyers. I think that is regrettable.

Senator SIMON. Mr. Johnston?

Mr. JOHNSTON. Thank you.

We have two Canadian perspectives on that, Senator. One, we have very tough competition from Canadian steel companies, like Stelco and Algoma and others. And the problem with picking legislative remedies from various cultures or various societies is there is a tendency to cherrypick them.

Our Canadian competition has significantly lower labor rates in steel. They have much faster capital recovery times. They have an almost 30 percent currency exchange rate advantage over us, and they have a tariff advantage on steel coming south versus going north.

I suppose the tendency is to look at the high spots, and you have to look at the total package in judging the cost impact of legislation.

The second thing we have are Canadian operations. We have a large iron ore subsidiary in northern Quebec, and we are not required by Canadian law to make extensive payments to employees in the event of plant shutdown. We have not had a plant shutdown, but we have had long-term layoffs. And we have a private system in place which, like steel, is fairly extensive.

I represent an industry which in terms of support for people who are laid off or for plant closings probably ought to be a model for the country as opposed to a target. In 1985, we paid almost $300 million in benefits to laid off employees in one form or another, which we have documented in one of our exhibits from a Carnegie Mellon study.

I guess what we are saying is the thing that is tough is the mandated, trying to impose top-down, on such a varied and complex and dynamic economy, rules which would apply monolithically without any regard to the private systems that are already in place.

Mr. IRVING. Senator, if I might add, there is a new study that was commissioned by NACOR with respect to the Canadian experience. The NAM would be happy to provide that to you for inclusion in the record.

Senator SIMON. We would appreciate it.

Mr. IRVING. And if I may be so bold as to request, too, that the Wall Street Journal editorial in today's paper with respect to the plant closing legislation be included in the record, if we may.

Senator SIMON. It can be included in the record.

[The editorial referred to follows:]

THE WALL STREET JOURNAL THURSDAY, MARCH 26, 1987

The Job-Destruction Bill

Some bad ideas won't stay buried. Every year since 1974, legislation requiring that companies give advance notice of plant closings has been introduced in Congress. The high-water mark for plant-closing legislation came in 1985, when a scaled-down version lost by five votes in the House of Representatives. Organized labor, which had pulled out all the lobbying stops, was humiliated. Many observers were ready to give the idea its last rites.

They didn't count on the tenacity of Sen. Howard Metzenbaum (D., Ohio). Noticing that the administration's new budget proposed an additional $600 million or so in displaced-workers assistance, Sen. Metzenbaum rushed forward with legislation that would appropriate the extra funds. He added a requirement that companies provide a minimum of 90 days' notice for any layoffs or closings involving 50 or more employees. A notice of 180 days would be required for any action involving more than 500 employees.

After notice is given, the employer must meet and consult "in good faith" with employees on possible alternatives to or modifications of the action. In short, employers face local pressure to keep plants open.

Now, giving notice sounds innocent enough at first. But what the law actually will do is delay adaptations to changing business conditions, which sometimes happen quickly. The costs of such delays could mean bankruptcy for a company that might otherwise survive. The more risks there are in starting or expanding a business, the fewer there will be, and fewer jobs.

A federal law also would reduce the competition states now engage in to provide an attractive climate for business. That competition has been crucial to U.S. economic vitality.

Yet Sen. Metzenbaum has the colossal nerve to say that "this legislation will help workers give the competitive edge back to America." Many members of Congress know this is hogwash but don't want to be tagged as being "against" jobs.

Business leaders are not unaware of the difficulties a plant shutdown can cause. In 1983, the National Center on Occupational Readjustment, a business-backed clearinghouse, was set up to provide guidance on how closings can be managed so that adverse effects are minimized.

There is nothing to stop labor unions from demanding job-security provisions in their contracts, and many do. Since nothing is free, workers who win such benefits have to give up something else. The present Labor Act places certain restrictions on closings, for example those seen as based on "anti-union animus."

Sen. Metzenbaum's bill is, however, a "jobs" bill of one sort—for lawyers. It creates a set period of time during which unions and others can file lawsuits. Employees claiming that a company did not adequately provide notice will seek injunctions ordering a plant to continue operating. Judges will have to evaluate any proposed "alternatives" or "modifications." Must the plant keep running so long as the court isn't satisfied? Where does it get the money? Will federal judges sell its products?

Past failures of Sen. Metzenbaum's efforts on behalf of economic stagnation have been no accident. Let's hope that this present Congress will be as perceptive as Congresses of the past in seeing the economic dangers his ideas present.

Senator SIMON. Mr. Johnston, if I may ask you one other question, and then I have a question for Mr. Lynch.

In talking about the plant closing section of the bill, you said it should be more practical. You did not say we should not have any legislation.

If you were just to draft a bill and try and see that we provide a little greater protection for the employees of this nation, how would you draft that legislation?

Mr. JOHNSTON. Well, I think I would certainly welcome an opportunity to go through that in some detail with you or your aides. But I think the first thing we would have to consider is can you impose such general rules on notification top-down to such wide varieties of market circumstances and competitive circumstances.

It seems to me that notice has to be given where practicable, and there needs to be some understanding that we have those requirements in place in collective bargaining agreements; perhaps there could be consideration of minimum standards for companies and employees whose standards already exceed those requirements. There should be consideration of offsets.

Not only can you duplicate the private sectors, but even in the public nonduplication provision, as I read it, you do not have to collect them at the same time, but you could extend them. Plant closing benefits are so high in the steel industry that they have become part of the problem.

Struggling steel companies sometimes need to pare sick plants and cannot do it; they cannot afford to pay it. And so they keep that excess capacity on line, which depresses price and which prohibits everybody from being able to survive with an effective return for those investments.

When the Government provides pension benefits, companies and unions have learned to game the PBGC and to game ERISA and to get rid of their obligations and to say, "Let the Government or the taxpayers take care of that; we will use our share of the company's income, then, in other areas." And that is very, very harmful on those competitors who are meeting those obligations and are now going to get the tax bill for those who have not. I think this has some of that potential here.

I would like to see the bill, for example, be more responsive to what John talked about with respect to sharing proprietary and competitive information with public sector people. I think the people who have the risk here and have the investment are the employees and the employer. I think Government ought to be a backup system. It can do many things to help. I do not think it should be involved in negotiating the alternatives to shutdown. We provide for that now in our contract. I think six months' service should not entitle an employee to eligibility, right out of high school, for shutdown benefits. Even the steelworkers do not ask us for that.

Senator SIMON. "Even" the steelworkers.

Mr. LYNCH. Not yet. [Laughter.]

Senator SIMON. If I could request of you, Mr. Johnston, if you could draft what you would like to see, you and your staff, what you think is a practical plant closing—I am not suggesting this Committee is going to accept what you are suggesting——

Mr. **Johnston**. Of course.

Senator **Simon** [continuing]. But what we are clearly trying to do is to search for something that does give workers more protection, that is practical for industry, that frankly will be signed by the President.

Mr. **Johnston**. Senator, we would be happy to do that, and I welcome that approach to the problem. It is healthy, and there are things that can be done to aid employees, and I think there are sectors where perhaps employers are escaping even a minimum obligation. But I think the bill is too undifferentiated in its present form, so we accept that invitation.

Senator **Simon**. All right.

Mr. **Lynch**. Senator, I would like to join with Mr. Johnston in that effort. I think together we might be able to develop a good piece of legislation—I am saying that facetiously, of course.

Senator **Simon**. Well, I am not being facetious when I say——

Mr. **Lynch**. I think the drafters of this legislation really met the test of what we think is good legislation, and I do not have any problem——

Senator **Simon**. But I gather that is not a unanimous opinion here at this point.

Let me say in all seriousness, Senator Quayle and I have suggested to some people in both the management and labor side that they get together to see if some practical compromise could be worked out. I would love to see Mr. Lynch and Mr. Johnston do that.

We can create an issue that we can keep shouting at each other about, or we can find some practical middle ground, and I would love to see that middle ground found.

Mr. **Lynch**. I would like to accept the challenge.

Senator **Simon**. All right. Mr. Johnston is nodding his head, too. Okay. We might as well adjourn the hearing. [Laughter.]

Senator **Simon**. Let me ask you, Mr. Lynch, what is your experience in the Steelworkers with the plant closing and notification? What has happened?

Mr. **Lynch**. Well, I must say that plant closing in the steel industry has been one which we have had a fairly decent relationship when the announcement was made that a plant was going to close.

The major problems we have had in the steel industry with notification about plant closings is that plants are indefinitely idled, sometimes for years, before the announcement comes that they are going to close the operation. Therefore, those people that were let go from the indefinitely idled facility are not entitled to plant closing benefits. So therefore, that has been one of the sticking problems with us.

Now, as far as other negotiated items such as sub-pay and unemployment compensation which is provided by the State, we have been able to get that because we are sitting on top of the situation. We consider ourselves a fairly sophisticated union, and we have been able to get some good benefits from that—and other Federal, State and local provisions that provide assistance to displaced workers—but not nearly enough. You see, we have members more than just in the steel industry. We have members who do not get sub-pay, for example. We have members that in fact do not get notice, an early enough notice, because we have not been able to negotiate with some of those employers early notification in those contracts.

But we have a very consistent habit of having consultation over any matters with reference to employee status, not only in the steel industry but in every industry.

So I am fairly surprised that now we are having some of the employers indicate that they are afraid of consultation. Consultation is a way of getting the information and getting cooperation, getting people knowledgeable about what the real situation is. And once people know the fact circumstances, normally they will find ways to adjust and ways to make it as painless as possible in making that adjustment.

So we have had in the steel industry a fairly good working relationship in terms of working with the employers. But it is those unorganized workers that we are looking beyond just those we have under the contract.

As we look at the studies that have been made, where 88 percent of some of these employers have given notification of some kind, but sometimes there are only two days of notification before people lose their jobs, lose their ability to keep body and soul together and pay for their expenses. So that is a major problem that we see not only as a union that is concerned about its own members, but as a union that is concerned about workers, concerned about human suffering around this country, as we know the Senators are concerned and most of us that are conscious people are concerned about those that suffer without having any way to really adjust themselves for the inevitable in some instances.

Yet on the other hand, there are instances where we have been able to turn the situation around once we have had consultation and we know that the plant is in trouble or the company is in trouble; we have been able to turn some of those situations around by, for example, in some instances giving concessions, as we did in the steel industry, as a matter of fact. In 1983, we gave about $2.9 billion worth of concessions just in the last rounds of negotiations; we gave an average of about 8 percent concessions, to try to keep these industries on-stream. When we know the fact circumstances, we want to help.

So that is why I think it is important that this legislation not only help in terms of providing a little bit of assistance for all of those that do not have unions, but also provide an even-handed approach, I think, for all workers in this country.

We think every employer has a responsibility. It should be, in my judgment, a cost of doing business to treat people humanely. And people are more important than capital, in my judgment. And I think it can be worked together so people and capital can get the most out of a bad circumstance.

Certainly, when you are talking about plant closure, you are not talking about a situation where I think you are going to have a condition where you are going to have people who are going to want to file a lot of lawsuits, people who want to do anything that is detrimental to that particular company.

Every time we have had a notification and some knowledge that a plant or company is in trouble, we try to help. And I think that is a basic point that I want to make here.

Senator **Simon**. All right. Let me just make an observation. When you talk about consultation, you are talking about something very different than what they fear in the area of consultation.

May I ask Mr. Lynch and Mr. Johnston if you would get back to me and to Senator Metzenbaum and to the Ranking Members with some kind of a report within ten days—now, the report may be that you cannot reach any agreement, but we want to move this legislation as rapidly as we can.

So if we can give this assignment to the two of you and ask for some kind of a report, positive or negative, within ten days. All right?

Mr. **Lynch**. Sure.

Mr. **Johnston**. Yes.

Senator **Simon**. We thank all of you for your testimony.

Our next witness is the honorable James Scheibel, a member of the City Council from St. Paul and the Chair of the League of Cities Human Development Committee.

Mr. **Scheibel**. Thank you, Senator.

Senator **Simon**. Thank you. We welcome you here, Mr. Scheibel.

STATEMENT OF HON. JAMES SCHEIBEL, CITY COUNCIL MEMBER, ST. PAUL, MN, AND CHAIRMAN, NATIONAL LEAGUE OF CITIES HUMAN DEVELOPMENT COMMITTEE

Mr. **Scheibel**. Mr. Chairman, we appreciate this opportunity to appear today before the Subcommittee.

S. 538 represents a key step to assist cities in dealing with the problems of worker dislocation caused by plant closings. The enormity of the plant closing problem today and its effect upon both the workers involved and the cities in which these industries are based demands the very type of action which this legislation initiates. We commend your leadership and your efforts.

Structural changes in the economy have left staggering numbers of skilled workers from declining industries without work and without prospects for new jobs in their communities. These workers face difficult problems, especially in communities with long-term high unemployment rates.

Between 1979 and 1984, nearly 11.5 million Americans were displaced or dislocated from jobs primarily in manufacturing industries. Findings indicate that closings were not isolated to one region of the country.

Of displaced adults who had worked at least three years in their jobs, the Labor Department found that one-fourth were unable to find a new job. Older persons, women and minorities had the greatest difficulty gaining new jobs. Of those dislocated workers who found work, 45 percent earned less than they had at their previous jobs.

The National League of Cities municipal policy is explicit in its support of the passage of legislation based upon many of the tenets premised in S. 538. As the level of government closest to dislocated workers and sources of employment, local governments experience first-hand the needs of dislocated workers. We are all too familiar with the chain of problems linked to the closing of a community's main source of employment or the impact of large-scale layoffs.

These events can devastate communities not only financially but in terms of human dignity and self-respect. The loss of a major employer or a substantial reduction in the number of jobs available causes the community to face the loss of its tax base, the ability to raise revenue, and the loss of consumer purchasing power.

We have supported Title III of JTPA as the primary resource for assisting American workers and industries which have fallen victim to decline and dislocation, but our experience has led us to believe that there are improvements which need to be made and can be made in the current model.

The best approach to the problem is to know in advance that a closing or permanent layoff is planned. The primary benefit of advance notice is that it permits the widest possible array of actions to preclude or at least mitigate the impact of plant closings or layoffs. In this regard, the National League of Cities applauds the inclusion in S. 538 of requirements and timetables for advance notification of plant closings or permanent layoffs.

The League of Cities further applauds the requirement that the unit of local government in the community in which a plant closing or layoff is planned be among the parties notified of such plans. To have local elected officials aware of such plans from the beginning is to maximize their potential for leadership and their time to develop preventive incentives and effective intervention strategies.

The mere knowledge of a planned closing or layoff even well in advance is not enough to ensure that the best possible course of action is followed. What will ensure that the best possible course is followed are preparedness on the parts of everyone involved, and a developed capacity to identify, analyze and address the needs of the situation. In this regard we support the concept of rapid response teams that would be established at the State level.

The Nation's locally-elected officials feel, however, that one additional component is needed in this legislation to ensure that the preparedness and the capacity to deal with plant closings and mass layoffs are developed and in place at the level at which they are most critical. That level is the local level, that "front line" to which I referred earlier.

In order for communities and local governments to be prepared for closing and layoffs and to have a developed capacity to intervene effectively, it is essential that funds for planning and response strategies be earmarked for SDAs and/or units of local government.

We recommend that an amount equal to 20 percent of the total funds allocated to the States under the Worker Readjustment Act be designated for funding local preparedness strategies and capacity development.

We would recommend that the formula for allocating these funds be based in part on the severity of the economic decline and job loss in the designated area.

I would like to just, in my closing minute, mention two examples in the State of Minnesota. One occurred in Albert Lea, when they found out in November of 1983 the plant was shut down. Because of the advance notice, a local man purchased the company and through local funding and working with the State and the jobs were saved, and in March of 1984, that facility began packaging meat products under the Farmstead food label.

In my own city in April of 1984, we learned that the Whirlpool plant was going to close, 800 employees. We had ten months' advance notice. Because we were able to work with them, of those 800 employees, 400 were involved in a program, and 80 percent were placed in jobs with the average wage at $7.21. It was because of that lead time and the cooperation among the vocational schools, labor and others that we were able to take action.

We believe that with S. 538, it ensures and encourages that kind of cooperation so cities, workers and all involved can address the issue.

Senator SIMON. We thank you very much for your testimony.

[The prepared statement of Mr. Scheibel follows:]

STATEMENT
OF
JAMES SCHEIBEL, COUNCIL MEMBER, ST. PAUL, MINNESOTA
FOR THE
NATIONAL LEAGUE OF CITIES
MARCH 26, 1987

Good morning, Mr. Chairman. I am James Scheibel, City Council Member from St. Paul, Minnesota. I serve as Chairman of the Human Development Committee of the National League of Cities and on the Governor's Job and Training Council.

I am testifying today on behalf of the publicly elected officials of over 16,000 of our nation's cities and towns.

We appreciate this opportunity to appear before the Subcommittee to express our enthusiastic support for the Economic Dislocation and Worker Adjustment Assistance Act. NLC supported H.R. 1616, the major plant closing legislation introduced during the 99th Congress. Because of that, we are pleased that the sponsors of S. 538 have made significant improvements on an already important piece of legislation - particularly those changes which directly involve local government.

S. 538 represents a key step to assist cities in dealing with the problems of worker dislocation caused by plant closings. The enormity of the plant closing problem today and its effect upon both the workers involved and the cities in which these industries are based demands the very type of action which this legislation initiates. We commend the leadership and support exemplified by you and your cosponsors.

Structural changes in the economy have left staggering numbers of skilled workers from declining industries without work and without prospects for new jobs in their communities. These workers face difficult problems, especially in communities with long-term high unemployment rates.

Between 1979 and 1984, nearly 11.5 million American workers were displaced or "dislocated" from jobs primarily in manufacturing industries. For each of these jobs, an additional 1.4 to 2.0 jobs are lost in related industries in the general economy.

Additional findings indicate that closings were not isolated to one region of the country, but occurred everywhere within the states. Between 1981 and 1984, the hardest hit areas were in the East North Central, South Atlantic and Pacific regions of the Unites States.

Of displaced adults who had worked at least three years in their jobs, the Labor Department found that one-fourth were unable to find a new job. Older persons, women and minorities had the greatest difficulty gaining new jobs. Of those dislocated workers who found work, 45 percent earned less than they had at their previous jobs.

NLC municipal policy is explicit in its support for the passage of legislation based upon many of the tenets premised within S. 538. As the level of government closest to dislocated workers and sources of employment, local governments experience first hand the needs of the dislocated worker. We are all too familiar with the chain of problems linked to the closing of a community's main source of employment or the impact of large scale layoffs.

These events can devastate communities not only financially but in terms of human dignity and self-respect. The loss of a major employer or a substantial reduction in the number of jobs available causes the community to face the loss of its tax base, the ability to raise revenue, the loss of consumer purchasing power. It forces an increase in the need and cost of community support services to respond to juvenile delinquency, crime, divorce and mental illness.

We have supported Title III of JTPA as the primary resource for assisting American workers and industries which have fallen victim to decline and dislocation, but our experience has led us to believe that there are improvements which need to be made and can be made in the current Title III model. It is in this regard that I wish to offer some general comments and one specific recommendation on S. 538.

The best possible approach is to know -- in advance -- that a closing or a permanent layoff is planned. The primary benefit of advance notice, is that it permits the widest possible array of actions to preclude -- or at least mitigate the impact of -- a plant closing or layoff. In this regard, the National League of Cities applauds the inclusion, in S. 538, of requirements and timetables for advance notification of planned closings and/or permanent layoffs.

NLC further applauds the requirement, that the unit of local government in the community in which a plant closing or layoff is planned be among the parties notified of such plans. To have local elected officials aware of such plans from the beginning is to maximize their potential for leadership and their time to develop preventative incentives and effective intervention strategies.

The mere knowledge of a planned closing or layoff -- even well in advance -- is, however, not enough to ensure that the best possible course of action is followed. What will ensure that the best possible course is followed are:

- preparedness on the parts of everyone involved; and
- a developed capacity to identify, analyze and address the needs of the situation.

In this regard, we support the concept of rapid response teams that would be established at the state level. We also endorse concept of the tripartite advisory council, the requirements for labor management negotiations, the mix of basic readjustment and retraining services, and the inclusion of units of local government as eligible grant recipients for funds under WRAP.

The nation's local elected officials feel, however, that one additional component is needed in this legislation to ensure that the preparedness and the capacity to deal with plant closings and mass layoffs are developed, and in place, at the level at which they are most critical. That level is the local level, that "front line" to which I referred earlier.

In order for communities and local governments to be prepared for closings and layoffs and to have a developed capacity to intervene effectively, it is essential that funds for planning and response strategies be earmarked for SDAs and/or units of local government. We therefore recommend that an amount equal to 20 percent of the total funds allocated to states under the Worker Readjustment Act be designated for funding local preparedness strategies and capacity development. We would recommend that the formula for allocating these funds be based, in part, on the population of the SDAs and/or localities, and, in part, on the severity of economic decline and job loss in each designated area.

In addition to being prepared for and capable of responding to plant closings and mass layoffs, SDAs and local governments would benefit from funding by taking pre-emptive measures to help ailing industries re-tool or expand, to retrain workers for in-demand jobs, and to better assess the dynamics and the needs of their local economies.

I would like to present to the subcommittee examples of how local intervention and state cooperation in combination of the JTPA program assisted two communities in Minnesota faced with the closing of a major source of employment.

The Mayor of Albert Lea, Minnesota learned in November of 1983 that Wilson Foods planned to shut down its plant in that city and layoff 1,900 employees. Wilson was the largest employer in this southern Minnesota municipality of approximately 19,000 residents.

Quick action from the city led to a local man's purchase of the plant and the retention of the jobs. City officials worked closely with the state government and a local development agency to package loans for the purchase and operation of the plant. In March 1984, the facility began packaging meat products under the Farmstead Foods label.

Albert Lea officials had tried to take a more active role in the operation of the plant as early as the 1970's, when it unsuccessfully pushed Wilson for greater capital investments. City officials were well aware that Wilson might close the facility even before they caught wind of it. Wilson was in bankruptcy court and had threatened a closing during negotiations with the union in the summer of 1983. Wilson wanted to sell the facility but cooperated, for the most part, with the city.

The city and the local development agency -- Jobs, Inc. -- have been involved in several other cases in which local management teams have purchased operations. In the most recent case, a local metal finishing plant came under the control of a large corporation with little interest in such an operation. Fearing the facility would close, the city and Jobs, Inc. provided loans and technical advise to a local management team that took over the facility in early 1986. The company, ALMCO, employs 32 people.

Another example occurred in late April 1984, when Whirlpool announced it would close its 800-employee St. Paul facility in early 1985. The city immediately began work with the company, the labor unions and the state government to prepare for the closure. The long lead time allowed the city to initiate highly effective job training and placement activities that have since attracted attention nationally. Of the almost 400 Whirlpool workers who participated in the city's dislocated worker project, about 80 percent were placed in jobs with an average hourly wage of $7.21.

At the start of the St. Paul efforts, city staff was able to take the time needed to survey Whirlpool workers and determine what programs to offer. One unexpected finding of the survey was that 22 percent of the workers needed basic literacy training, and so adult education became a key component of the retraining and placement effort.

In addition, the city offered counseling to help workers determine what type of training and jobs to pursue. The city's vocational school established a special course for Whirlpool workers. The St. Paul program also included on-the-job training, development of job search skills, individualized retraining, support groups for the workers and other elements. Whirlpool established a program for workers as well, providing some job search assistance, counseling and skills training.

The success of this dislocated worker project depended on close cooperation between the various governments, community groups, the company and the unions. Contacts had to be established and coalitions built before the program could work. The city worked with the unions, the state AFL-CIO, Minnesota's Department of Education, its neighborhood councils, the state job service, Whirpool, and other groups. Such coordination would have been impossible without ten months of time between Whirlpool's announcement of the closing and the shutdown of the plant.

In this case, the city and the workers were lucky. A plant closing law institutionalizing advance notice and requiring communication among the city, the workers and the company would ensure the proper environment for successes similar to that of St. Paul's in the Whirlpool case. Moreover, the Dislocated Worker

Units proposed in S. 538 should be a joint state-local unit. The local government is where the people work and the business is.

Our nation is at serious risk if we fail to act now to shore-up our sagging economic standing in the international marketplace and it is through saving our valuable human resources that we can continue to compete abroad.

The legislation we discuss today addresses many of the concerns voiced by our nations locally elected officials. Every effort must be made to prevent the dislocation of a community work force. This bill, through its requirement for the employer to work jointly with local government and employees is a good faith attempt to find a viable solution for all concerned.

Senator SIMON. Next, we have a panel made up of Mr. Jack Klepinger, who has already been introduced by Senator Hatch, and Carl Struever—with the umlaut in there——

Mr. STRUEVER. We lost it about 100 years ago.

Senator SIMON [continuing]. From Baltimore, Maryland, Chairman of the Private Industry Council there.

Mr. Klepinger?

STATEMENT OF JACK KLEPINGER, CHAIRMAN, WEBER-MORGAN COUNTY CHAIRS ASSOCIATION PRIVATE INDUSTRY COUNCIL AND CHAIRMAN, NATIONAL ASSOCIATION OF PRIVATE INDUSTRY COUNCILS, OGDEN, UT, AND CARL W. STRUEVER, CHAIRMAN, PRIVATE INDUSTRY COUNCIL, BALTIMORE METROPOLITAN MANPOWER CONSORTIUM, BALTIMORE, MD

Mr. KLEPINGER. Thank you, Mr. Chairman.

I appreciate the opportunity to testify on these important issues of economic adjustment for the dislocated workers.

As you know, my name is Jack Klepinger, and I am the General Manager of Wells Cargo in Ogden, Utah. We are a manufacturer of trailers, and we have plants in Indiana, Georgia and Texas as well as in Ogden.

Today I am going to be speaking as the Chairman of the Private Industry Council, Incorporated in Ogden, Utah, as well as Chairman of the National Association of Private Industry Councils.

My PIC involvement began in 1982, and in 1984, I became Chairman of the Private Industry Council, Inc., which serves the Weber-Morgan Counties in Utah. Then in 1985, I was elected to the Board of Directors of the National Association of Private Industry Councils and became its Chair in October of 1986.

As Private Industry Councils and specifically the private sector members have become more sure of their roles in the employment and training arena, and it is exciting to see that this new energy develops and becomes a part of the finding, training and placing of the unemployed, there is finally an entity that has allowed the many players in employment and training to sit down and work together for a common cause. This in turn is adding new linkages to making the program even stronger. And one of the encouraging aspects of the Private Industry Council evolution has been the desire to get to those hard-to-reach unemployed. This is a difficult task, but one that has become primary in many Private Industry Councils across the land.

These points about Private Industry Council involvement merely exemplify the interest level in existing programs as well as becoming a significant partner in the issues of the dislocated worker.

There are several principles that we believe should guide the development of a new or expanded effort in resolving the dislocated worker issues. Public/private partnerships should be an underlying basis for all programs. Private Industry Councils are uniquely structured, qualified and committed to bring that partnership to bear in meeting the problems of plant closings and permanent layoffs at the local lvel.

In February, as you know, the NAPIC held a national business forum of PIC chairs. We developed a resolution which was unanimously approved and the bottom line of that resolution was that PICs want to be actively involved in resolving the various needs of the dislocated worker. Therefore, any new or restructured program should mandate an active role for PICs, and the delivery system for dislocated workers should be structured upon the Job Training Partnership Act delivery system.

We feel that the State Job Training Coordinating Councils need to be active partners with the PICs and should be restructured to reflect greater business involvement.

Now, there are obviously other points that should be included in any new legislation, such as the need for rapid response and immediate availability of resources on short notice.

The key to successful legislation is providing flexibility so that each local area can react as appropriate. And the groups that are in place, with their hands on the pulse of the employment issues, are the PICs.

It is with this recognition of the local role that NAPIC and its Board of Directors and its membership support the provisions of Senate Bill 539. We support it because it provides the guidelines and specifications for a State-local dislocated worker delivery system that involves input of Governors, State Councils, PICs, and local elected officials.

Let us not frustrate the successful evolution of PICs. Do not run parallel systems. Use what is already in place.

Thank you.

Senator SIMON. I thank you.

[The prepared statement of Klepinger follows:]

NATIONAL ASSOCIATION OF PRIVATE INDUSTRY COUNCILS

TESTIMONY

OF THE

NATIONAL ASSOCIATION OF PRIVATE INDUSTRY COUNCILS

BEFORE A JOINT HEARING OF THE

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY

AND

SUBCOMMITTEE ON LABOR

OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES

OF THE

UNITED STATES SENATE

ON

ECONOMIC ADJUSTMENT ASSISTANCE

FOR DISLOCATED WORKERS

MARCH 26, 1987

Suite 600 1015 15th Street, N.W. Washington, D.C. 20005 Telephone 202/289-2950

Mr. Chairman, Members of the Subcommittees, I appreciate the opportunity to testify today on the important issues of economic adjustment assistance for dislocated workers. I am Jack Klepinger, Chairman of the Private Industry Council, Incorporated of Ogden, Utah. I also am speaking today as Chairman of the National Association of Private Industry Councils (NAPIC).

The Private Industry Council, Inc. is a non-profit organization headed by business and community volunteers that serves as grant recipient and administrative entity for the Job Training Partnership Act (JTPA) in Weber and Morgan Counties, Utah. I have been a member of the PIC since 1982 and chairman since 1984. In our community, as in many others across the nation, we have built a strong working relationship with local elected officials and the governor. We are proud that the time spent -- as volunteers, elected representatives or professional administrators and educators -- has resulted in high quality job training programs that benefit unemployed and disadvantaged citizens in our community.

NAPIC is the only national membership organization for private industry councils (PICs). It is a non-profit organization with an elected board of directors from among PIC chairpersons, business representatives and PIC administrators. Membership is open to all PICs and State Job Training Coordinating Councils (SJTCCs). The Association seeks to strengthen volunteer leadership on PICs through educational seminars and forums, informational services and active efforts to foster PIC peer to peer communication and problem solving. I have been a member of the Board for two years and Chairman since October, 1986.

Mr. Chairman, addressing the needs of workers who lose their jobs permanently because of structural economic adjustments is a long-term problem and will require development of long-term strategies. The problem has been well documented by this Subcommittee, among others, and need not be reiterated here. Responding to this challenge will require leadership at all levels of public life.

In our view, there is an important role for private sector employers as one element of this leadership that must be tapped. And PICs represent an important forum to gain the involvement of employers at the local level. PICs constitute the major business-led institution that can focus business in-put and support for efforts to design and implement economic adjustment strategies and institutional responsiveness in the local labor market.

As you know, private industry councils were established on a demonstration basis in 1978. The successes of these early partnerships between business, labor, community groups, government agencies and elected representatives laid the groundwork for the overwhelming bipartisan passage of the Job Training Partnership Act of 1983 which seeks to institutionalize PICs as a key element of the local employment and training policy structure. The results have been generally positive and we continue to see an evolution of business participation and PIC-elected official cooperation that suggests that the Congress had a good idea that merits your continued support.

In the brief time available to us today, we would like to lay out several principles that we believe should guide the development of a new or expanded effort to assure the continued productivity and economic independence of dislocated workers. These principles have emerged from the experiences of the many PICs which are currently operating dislocated worker programs.

Public/private partnerships should be an underlying basis for all programs. Private Industry Councils are uniquely structured, qualified and commited to bring that partnership to bear in meeting the problems of plant closings and permanent layoffs at the local level.

NAPIC sponsored a National Business Forum of Private Industry Council Chairpersons on February 1-3, 1987. At that time over 200 PICs confirmed that a major area of concern among business volunteers was the need to continue the development of an effective local delivery structure for dislocated workers. Attached to this statement is a resolution adopted unanimously at this recent forum urging Congress and the President to utilize the experience and expertise of PICs to coordinate, oversee, and manage the implementation of the delivery of services to dislocated workers.

As you can see, the message of PIC chairs is loud, clear and unanimous. PICs were created by Congress to serve as a forum to address the need to coordinate education, job training, and social services in the local labor market. Economic adjustment assistance for dislocated workers is a key element in the menu of community resources. PICs are experienced and want to be involved.

Any new or restructured program should mandate an active role for Private Industry Councils.

PICs exist at the community level where the missions and goals of federal legislation must be turned into programs. As PICs, we are concerned about how a program will work in Peoria, Ogden or Seattle.

PICs include most of the key policy making institutions that will be involved in local programs. PIC membership includes representatives of organized labor, local education, the employment service, economic development, vocational rehabilitation agencies and community based organizations. In addition, they have developed close working relationships with local elected officials at the city and county level. Furthermore, they are developing partnerships with those state agencies that are critical to the local coordination of services.

Above all, however, PICs bring the business community to the table in a manner and to a degree that does not exist in any other place. Some ten thousand business volunteers serve on PICs. It is a resource that can be strengthened but not one that you will be able to duplicate.

The delivery system for dislocated workers should be structured upon the JTPA delivery system.

As PIC volunteers, we are concerned that a restructuring of adjustment services not lead to a parallel delivery system to JTPA. The JTPA system has some four years of experience in operating programs. Under JTPA, states and localities have developed coordination mechanisms among the various agencies that will be called upon to serve dislocated workers. PICs are already mandated to engage in joint planning with the employment service and have developed joint efforts with welfare agencies, vocational schools and community colleges, among others. Many also work with local economic development agencies to capture new jobs for their clients and all of them have a network of employers who use the JTPA system to fill job orders.

State Job Training Coordinating Councils need to be active partners with local PICs and should be restructured to reflect greater business involvement.

We are of the mind that the State Job Training Coordinating Councils established under JTPA be utilized as the councils for state level program services and coordination under this program. New legislation should clearly set out the responsibilities of the state councils. In our view, the councils should be modified to reflect business leadership as is the case with PICs.

While the above are major points in the experience of PICs, we might mention other points that should be included in any new legislation. An economic adjustment assistance program needs a rapid response capability at the state level. Above all, this means the capacity to make resources available on short notice, at least by traditional government and public contracting standards. Technical assistance will be needed at both the state and local level. Provision for federal leadership in developing and implementing such assistance should be included in new legislation. Legislation should provide flexibility so that dislocated workers can receive comprehensive services appropriate to individual needs.

Recommendations

After careful review of each bill (S.538 and S.539) on the part of the NAPIC Board of Directors and consultation and communication with our membership, NAPIC is confident in stating that the delivery system established under the administrative structures provided in S.539, as proposed by the U.S. Department of Labor, would provide a stronger, more effective delivery system for the nation's workforce.

The Administration's bill recognizes the need for a local role in the delivery system. Most importantly, it sets up a process whereby local delivery areas and administrative structures will be established in accordance with an agreement between the Governor, and local elected officials and the JTPA PIC. To ensure local comprehensive planning and coordination of services it also makes service delivery areas under the Job Training Partnership Act the building blocks for delivery areas under the dislocated worker initiative.

The bill specifies that entities eligible for designation as substate grantees include PICs in the substate areas and service delivery area grant recipients or administrative entities under JTPA.

Although the Administration's bill gives broad discretion to Governors in the design of program systems, it also gives appropriate weight to a government policy that aspires to involve business and community interests through existing job training institutions especially the local private industry councils. It seems to us that the use of these councils, whenever possible, is an important part of this program structure. At the same time, the bill allows the Governor to evaluate local institutions and resources to assure effective service delivery throughout the state and may choose a different approach.

Since plant-specific centers are not always feasible or practical, a locally based service delivery system is necessary. Important to local communities, this proposed system could serve small employers and their employees, a group that is too often overlooked in government programs. In addition, the system should also serve dislocated workers who are unemployed as a result of "ripple effects" in the local economy, or who initially choose not to participate in plant centers but later feel the need for labor market services, or who have otherwise lost their jobs with no reasonable expectation of finding work in that occupation, industry, or geographic area.

Finally, under the Administration's proposal, the State Job Training Coordinating Council established by JTPA would be changed and provided with broader advisory authority over the state's labor market policies. It would continue to be responsible for promoting coordination of employment and training related programs including those providing economic development, education, training, and social services. It would also advise the Governor on the structure and policies for establishing this expanded dislocated worker program.

We believe that these are positive steps in building public/private cooperation.

Mr. Chairman, NAPIC believes that the program of readjustment services being proposed in these bills represents a critically needed addition to current employment and training policy. As we noted above, we are particularly impressed with S.539, because its framers have grappled with the difficult questions of how to structure a local policy and program delivery component to a national program, and, in the main, have answered these questions in a satisfactory manner.

Private Industry Councils are and will remain a key broker of resources for the dislocated worker, regardless of the specific resolution that the Congress comes to. That is because we are community institutions with a responsibility and commitment to problem solving for American workers. We are confident that this Committee will retain a central role for PICs and we stand ready to assist you at any time.

Mr. Chairman, I would be happy to answer any questions you may have.

NATIONAL ASSOCIATION OF PRIVATE INDUSTRY COUNCILS

RESOLUTION PRESENTED AND ADOPTED AT THE

1987 NATIONAL BUSINESS FORUM OF

PRIVATE INDUSTRY COUNCIL CHAIRPERSONS

Washington Marriott Hotel
Washington, D.C.
February 2, 1987

Whereas, the President and the Congress are currently considering measures for the restructuring of the Nation's services for dislocated workers; and,

Whereas, the Nation's Private Industry Councils and Service Delivery Areas have successfully demonstrated their ability to serve this population; and,

Whereas, the Job Training Partnership Act system has been federally mandated to coordinate the local delivery of employment and training services; therefore,

Be It Resolved, that the National Association of Private Industry Councils urges the President and the Congress to fully utilize the experience and expertise of the Private Industry Councils and Service Delivery Areas to coordinate, oversee, and manage the implementation of the delivery of services to dislocated workers under any new or restructured federal program.

Senator **Simon**. We have a vote on right now, and it will be followed by another vote, so we will have to take a 15- or 20-minute recess, and then the Subcommittee will resume.

[Short recess.]

Senator **Simon**. The hearing will be resumed.

Let me enter into the record a statement by my colleague Senator Gordon Humphrey.

[The prepared statement of Senator Humphrey follows:]

STATEMENT OF SENATOR GORDON J. HUMPHREY

HEARING ON S. 538

COMMITTEE ON LABOR AND HUMAN RESOURCES

GOOD MORNING.

MR CHAIRMAN, SEVERAL WITNESSES THIS MORNING WILL FOCUS ON TITLE II OF S. 538, THE WORKER ADJUSTMENT LEGISLATION PENDING BEFORE THE FULL LABOR AND HUMAN RESOURCES COMMITTEE.

BOTH ARE EXPERTS IN THEIR OWN RIGHT. BOTH HAVE BEEN THROUGH THE AGONY OF ECONOMIC DISRUPTION CAUSED BY A VARIETY OF FACTORS. I HOPE THE MEMBERS OF THESE SUBCOMMITTEES LISTEN CAREFULLY TO THEIR EXPERIENCES. FAILURE TO HEED THEIR WARNINGS MAY WELL LEAD TO ECONOMIC PARALYSIS.

I HAVE CAREFULLY REVIEWED THE TESTIMONY GIVEN DURING THE FIRST HEARING AND ONE THOUGHT COMES TO MIND. DURING THE PROCESS OF COLLECTIVE BARGAINING, THE PARTIES--LABOR AND MANAGEMENT-- HAVE ONLY ONE GOAL. BOTH SIDES TRY FOR IMMEDIATE MAXIMUM ECONOMIC GAIN AT THE EXPENSE OF THE OTHER PARTY. THIS MOTIVATION IS NATURAL ENOUGH. BUT NEITHER PARTY APPEARS TO GIVE MUCH THOUGHT TO THE LONG TERM IMPLICATIONS THAT THEIR AGREEMENT WILL HAVE ON THE HEALTH OF THEIR PARTICULAR INDUSTRY.

THE PUBLIC SAW THIS ONCE AGAIN AS THE UNITED STEELWORKERS AND USX CONCLUDED LONG AND, I AM SURE, DIFFICULT NEGOTIATIONS THAT ULTIMATELY RESULTED IN A REDUCTION IN THE SIZE OF USX'S TOTAL WORKFORCE. PERHAPS, MR CHAIRMAN, THESE LAYOFFS COULD HAVE BEEN AVOIDED IF THERE HAD BEEN A STATUTORY PROVISION PLACED ON THE BOOKS MANY YEARS AGO REQUIRING THAT PARTIES TO A COLLECTIVE BARGAINING AGREEMENT NEGOTIATE WITH ONE EYE ON THE LONG TERM CONSEQUENCES THAT THEIR DECISIONMAKING HAS ON JOBS AND THE NECESSITY FOR RETRAINING PROGRAMS. MAYBE A LITTLE MORE COMMON SENSE IN PRIOR BARGAINING COULD HAVE MADE FOR LESS ECONOMIC DISLOCATION AFTER THE LATEST AGREEMENT WAS REACHED IN THE STEEL INDUSTRY. I BELIEVE THAT THE AUTO WORKERS HAVE REACHED SOME ACCORD WITH THE AUTO COMPANIES ON JOB RETRAINING. PERHAPS IT SHOULD BE A REQUIRED SUBJECT OF BARGAINING FOR ALL OTHER "DECLINING" INDUSTRIES; IT MIGHT OBVIATE THE NEED FOR FEDERAL RETRAINING PROGRAMS IN THE FUTURE.

I SUGGEST, MR. CHAIRMAN, THAT THE LABOR AND HUMAN RESOURCES [illegible] A MORE BENEFICIAL IMPACT ON PLANT CLOSINGS PROBLEMS BY CONSIDERING A POSITIVE STATUTORY CHANGE ALONG THIS LINE THAN BY PUSHING FOR THE SELF-DEFEATING NOTICE AND CONSULTATION PROVISIONS CONTAINED IN TITLE II OF S. 538.

Senator SIMON. Mr. Struever, I am sorry. Please proceed. There is not much I can do to control voting on the Floor.

Mr. STRUEVER. In my business life, I am President of Struever Brothers, Eccles and Rouse, a real estate development and general contracting company in Baltimore. My company employs 95 workers and had sales last year of $25 million.

In my civic life, my goal has been helping others to self-sufficiency. So job training is my focus, and I work as Chairman of the Baltimore Metropolitan Private Industry Council and also act as Chair of the Education and Welfare Employment Task Forces of the Maryland Job Training Coordinating Council.

My hope is that the smoke about the plant closure part of the bill will not obscure the very important discussion of the real job of getting unemployed workers dislocated by the change in economy back to work and productive. And that is what I would like to talk about.

And from my perspective as a small businessman, laboring in the trenches of job training programs for a long time, I find the intent of both Senate Bills 538 and 539 refreshing. These proposals give States the administrative flexibility and funding resources, and the funding is important, because we get a lot of great ideas from Washington and often no money to do anything about them, and we get the flexibility to respond early and quickly to business work force problems.

Both bills encourage the States to offer unemployed workers a wide range of reemployment help customized to meet their individual needs.

What is upsetting to me is that Bill 538 in particular fails to build on the existing employment and training system, potentially fragmenting and diffusing rather than integrating and coordinating our current efforts.

The second problem is that the funds do not get directly down to the local level where we can best respond to work force and business needs. Our country has been in the job training business for a long time. I have been a volunteer in the Baltimore PIC for nine years, and I am just a babe in the woods compared to some. Working as a public/private partnership, we have built a State and local service delivery system that is responsible and accountable for achieving the bottom line results of giving the unemployed a job.

All across America, at both the State and local levels, under the Job Training Partnership Act, there are active teams of people from business, labor, community groups and public agencies directing a wide range of programs aimed at building self-sufficiency. The original goal in establishing these teams—the State job training coordinating councils and the local PICs—was to improve coordination among a tangled web of public and private agencies and thus make more efficient use of existing resources. In three years, these teams are already a resounding success, beating tough performance goals again and again.

This success stimulates us to expand the responsibility of PICs and the State coordinating councils. In Maryland, for example, the State job training coordinating council now convenes a welfare employment task force that includes four businesspeople, of which I am one, and the Secretaries of Employment and Training, Economic and Community Development and Human Resources. This high-level interagency group is charged with transforming the welfare bureaucracy from an income maintenance system to a self-sufficiency system. Called Investment in Job Opportunities, the planning and implementation is directed by local welfare task forces of the State's ten PICs that are out there, working in the fields.

In reacting to the staggering 50 percent dropout rate in the Baltimore City Public Schools, our PIC organized what I think is America's best dropout prevention program called "Futures." Focusing energy and funding from the schools, we brought together the schools, JTPA, II-B funding, the business community, churches, city health and recreation departments and put together a great project for 500 kids that are on their way out of school.

And tomorrow, the PIC convenes a task force that will adopt a plan to integrate the Job Service into what we are already doing with the PIC, with our JTPA-funded employment and training programs into one comprehensive and comprehensible public labor market exchange. And that "comprehensible" is always a big thing from our business point of view.

The JTPA management structure, the State coordinating councils and the local PICs, are becoming "the" human resource development action team not only in Maryland but in many other States that are proven effective at training a skilled work force.

I have been to enough conferences to hear Bill Brock—and I think he is a great guy—and Roger Semerad preach the virtues of coordination to know we do not need a separate service delivery structure with another brand new advisory council.

Senate Bill 538 is a fragmentation of effort. Not one mention is made of the existing PIC and State coordinating councils. Even more alarming is that the funds never make it down to the local level. One billion dollars is left to the discretion of a combination of the Secretary of Labor and the Governors.

One of the great efficiencies of JTPA is its effectiveness at getting funds down to local control with clear accountability and little administrative overhead.

Work force needs vary tremendously from city to city and town to town, and we need a training system that can move quickly to respond to local business needs. JTPA put implementation and direct program administration at the local level to create a responsive system that is accountable.

Any new dislocated worker program should maintain this fine balance between local planning and implementation and State oversight. Nor should the Federal government disrupt this balance by holding back such a large percentage of funds. I have not heard anyone in recent years say that the Federal Government knows how to spend money better than us local folks. A funding split of 20 percent to the Department of Labor for special projects, 30 percent staying at the State level for statewide initiatives, and 50 percent flowing through to the local service delivery system would be the most effective.

I am told that one of the reasons the PICs and State coordinating councils are left out of Senate Bill 538 is that labor feels left out of JTPA, and that the Trade Adjustment Act is their program. If this country is truly going to have a job training partnership, then we do not need a business training system and a labor training system. Rather the challenge is to expand labor's role in the existing JTPA system. When providing the State job training coordinating councils and PICs' funds under the new program, Congress should mandate establishment of worker reemployment task forces under the JTPA structure. These task forces should require substantial and meaningful labor participation.

I would like to leave you with two key points. In 1981, Congress created an excellent management structure for building a skilled work force. This structure is called the Job Training Partnership Act. Use the existing system; it works. And second, get the money down to the local level where we know what business needs.

Thank you.

Senator SIMON. Thank you.

[The prepared statement of Mr. Struever follows:]

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TESTIMONY
OF THE
BALTIMORE METROPOLITAN PRIVATE INDUSTRY COUNCIL
BEFORE A JOINT HEARING OF THE

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY
AND
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

ON ECONOMIC ADJUSTMENT ASSISTANCE FOR DISLOCATED
WORKERS

MARCH 26, 1987

In my business life, I am President of Struever Bros. Eccles & Rouse, Inc. a real estate developer and general contractor active in Baltimore's revitalization. My company employs 95 workers and had sales last year of $25 million. In my civic life, I've endeavored to help those not as fortunate as I get a chance at making it in the free enterprise system. My goal has been helping others to self sufficiency, so job training is my focus and I work as Chairman of the Baltimore Metropolitan Private Industry Council and also act as Chair of the Education and Welfare Employment Task Forces of the Governor's Employment and Training Council.

From my perspective as a small businessman laboring in the trenches of job training programs, I find the intent of both Senate Bill #538 and the Administration's Senate Bill #539 refreshing. A skilled workforce is critical to our economic prosperity and the competitiveness of American business in the world marketplace. These proposals give states the administrative flexibility and funding resources (and the funding is essential because we get a lot of great ideas from the Federal Government with no money to put them into action) to respond early and quickly to business workforce problems. Both bills encourage the states to offer unemployed workers a wide range of reemployment help with services individualized to meet each worker's specific needs. What's upsetting is that Bill #538 in particular fails to build on the existing employment and training system, potentially fragmenting and defusing rather than integrating and coordinating our current efforts.

Our country has been in the job training business for a long time - I've been a volunteer on the Baltimore PIC for nine years and I'm just a babe in the woods compared to some. Working as a public/private partnership, we've built a state and local service delivery system that is responsible and accountable for achieving the bottom line results of giving the unemployed a job.

All across America, at both the state and local levels, under the Job Training Partnership Act there are active teams of people from business, labor, community groups, and public agencies directing a wide range of programs aimed at building self sufficiency. The original goal in establishing these teams - state job training coordinating councils and local Private Industry Councils - was to improve coordination among a tangled web of public and private agencies and thus make more efficient use of existing resources. In three years these teams are already a resounding success, beating tough performance goals again and again.

This success stimulates us to expand the responsibility of PIC's and state coordinating councils. In Maryland, the Governor's Employment and Training Council now convenes a welfare employment task force that includes four business people and the Secretaries of Employment and Training, Economic and Community Development, and Human Resources. This high level interagency group is charged with transforming the welfare bureaucracy from an income maintenance system to a self sufficiency system. Called Investment in Job Opportunities, the planning and implementation is directed by local welfare task forces of the state's 10 PIC's.

Reacting to the staggering 50% drop-out rate in the Baltimore City Public Schools, our PIC organized America's best drop-out prevention program called "Futures" focusing energy and funding from the schools, JTPA, the business community, churches, and the City Health and Recreation Departments. Tomorrow, the Baltimore PIC convenes a task force that will adopt a plan to integrate the Job Service with the PIC's JTPA employment and training programs into one comprehensive, comprehensible public labor market exchange.

The JTPA management structure - the state job training coordinating councils and the local PIC's - are becoming the human resource development action team proven effective at training a skilled workforce for tomorrow's economy. With the challenges of illiteracy, disconnected youth, and huge mismatches between a changing economy demanding more skills and a shrinking workforce with less skills, we need a comprehensive, integrated employment and training system.

I've been to enough conferences to hear Bill Brock and Roger Semerad preach the virtues of coordination to know we don't need a separate service delivery structure with another brand new advisory council. Senate Bill #538 is a fragmentation of effort. Not one mention is made of the existing PIC and state coordinating councils. Even more alarming is that the funds never make it down to the local level. One billion dollars is left to the discretion of a combination of the Secretary of Labor and the Governors.

One of the great efficiences of JTPA is its effectiveness at getting funds down to local control with clear accountability and little administrative overhead. Workforce needs vary tremendously from area to area. Technologies change ever more rapidly. We need a training system that can move quickly to respond to local business needs. JTPA put implementation and direct program administration at the local level to create a responsive system accountable to local needs. Under JTPA, the state coordinating council plays a key role in setting policy, coordinating and monitoring services at the state level, providing management and technical assistance to local programs, and running statewide demonstration projects.

Any new dislocated worker program should maintain this fine balance between local planning and implementation and state oversight. Nor should the Federal government disrupt this balance by holding back such a large percentage of funds. I haven't heard anyone in recent years say that the Federal government knows better how to spend money. The whole concept of JTPA was to get direct control of public programs closer to the people and businesses being served. A funding split of 20% to the Department of Labor for special projects, 30% staying at the state level for statewide initiatives, and 50% flowing through to the local service delivery system would be the most effective.

As a businessperson, one of the constant frustrations of working in a public/private partnership with government is that the rules are constantly changing. Programs come and go with confusing frequency. JTPA Title III is here one day and, just as we get smart at using it, it's gone the next. Instead of building on success and learning from experience, we leap from one alphabet soup to another. There are 10,000 businesspeople active on PIC's. As we get better at our jobs, we get more excited and more effective. There is no surer way to turn off this energy than to start dismantling the system and establishing a whole other competitive structure.

I'm told that one of the reasons the PIC's and state coordinating councils are left out of Senate Bill #538 is because labor feels left out of JTPA and that the Trade Adjustment Act funds going into the new dislocated worker program is "their" program. Uncomfortable with business majorities mandated by law for PIC's, labor prefers a separate system where they have more control.

If this country is truly going to have a job training partnership, then we don't need a "business" training system and a "labor" training system. Rather the challenge is to expand labor's role in the existing JTPA system. When providing state job training coordinating councils and PIC's funds under this new dislocated worker program, Congress should mandate establishment of worker reemployment task forces under the JTPA structure. These PIC task forces would require substantial and meaningful labor participation.

This team approach would make the job training partnership of JTPA stronger. Build on success. Set measurable goals and provide clear accountability. Encourage a comprehensive, comprehensible employment and training system. Coordinate and build on effective use of existing resources. Establish a unified management structure. Get the flexibility and the funding down to the local level where we really know what workers and business need. The intention of both Senate Bills #538 and #539 is right on the money. To compete with the Japanese we don't need protectionist policy - we need a skilled laborforce ready to work with business to adapt quickly to the demands of a changing economy.

Senator SIMON. One question for both of you. If we were to involve the PICs in S. 538 in a more meaningful way, and aside from the controversial plant closing side of it, does the legislation look to you like it makes sense?

Mr. STRUEVER. I think the whole key there is using the existing system. The flexibility built into the bill as written in terms of the wide range of services offered to workers, the broad definition of what a dislocated worker is, is excellent. So I think the flexibility is there, the concept and intent is there, and all we are asking is flow it through the existing system; it works well.

Senator SIMON. Mr. Klepinger, do you agree?

Mr. KLEPINGER. I certainly concur with that. I am not certain that I totally understand—why put it into 538 if 539 spells it out as clearly as I feel that it is so well-stated.

Senator SIMON. We thank you both very, very much for your testimony and for your work in the local community. What we need to have is clearly more working together, and you are part of that, and we commend you for it.

Mr. KLEPINGER. Thank you for the opportunity.

Senator SIMON. Our final panel consists of Eleanor Holmes Norton, Donna LeClair, and Raul Yzaguirre.

Eleanor Holmes Norton was a leader in the Carter Administration, where she chaired the EEOC and has done outstanding work in a host of areas. We are very honored to have you here.

You are here representing the Full Employment Action Council today.

STATEMENTS OF ELEANOR HOLMES NORTON, FULL EMPLOYMENT ACTION COUNCIL, WASHINGTON, DC; RAUL YZAGUIRRE, PRESIDENT, NATIONAL COUNCIL OF LA RAZA, WASHINGTON, DC, AND DONNA LE CLAIR, PRESIDENT-ELECT, DISPLACED HOMEMAKERS NETWORK, AND DIRECTOR, BAY STATE SKILLS CORPORATION, BOSTON, MA

Ms. NORTON. I am.

Mr. Chairman, let me apologize in advance to you and to my two colleagues on the panel that I will directly have to leave after I testify and after you ask me a few questions, because of previous commitments. But I am pleased to have the opportunity to testify here before you this morning concerning this very important issue.

Thank you for inviting me to appear here, and I do so on behalf of the National Committee for Full Employment, and offer our views on problems faced by dislocated workers and the need for a more comprehensive, Federally-assisted system for economic adjustment and retraining.

I am accompanied today by NCFE Executive Director Calvin George.

I also serve as Chair of JOBS USA, an NCFE-sponsored and newly-established project, working with broad-based local coalitions in six pilot States on developing innovative employment and training models for dislocated workers and new entrants to the work force, whose opportunities in the mainstream labor market are being severely constricted.

I am confident that JOBS USA State coalitions will welcome renewed Federal leadership on the employment policy front and would embrace the strong role given to States in the proposed Economic Dislocation and Worker Adjustment Assistance Act, S.538.

I am going to summarize the rest of my testimony. Let me also say that my interest in this derives also from the fact that I am a Professor of Law at Georgetown University Law Center where I teach labor law, which keeps me in touch with some of the desperate problems raised by structural unemployment today.

Contrary to popular perceptions, Mr. Chairman, economic dislocation is not purely a "rust belt" problem, isolated in the highly-industrialized Midwest and Northeast regions of the country and primarily affecting highly-skilled and highly-paid blue-collar workers. Rather, it is a national problem, reaching into every State of the Nation.

Analysis of the BLS data shows that rates of dislocation are actually the highest in two regions of the South Central and Rocky Mountain States. The industrial Midwest is actually the region with the fourth-highest dislocation rate, though the absolute numbers of dislocated workers are greater there, since overall that region has a larger work force.

The National Committee for Full Employment has conducted its analysis of BLS data and reviewed other major studies to ascertain the impact of economic dislocation on the low- and middle-income minority and female work force. A copy of the special analysis will be inserted into the record.

The special analysis shows a majority of dislocated workers in the BLS survey, or 55.5 percent, had wages on their previous jobs well below the average age for all U.S. workers, and the highest rates of dislocation can be found in the 40 percent of the work force below the average wage. Rates of dislocation are highest for Hispanic workers, at 14.4 percent, and blacks, at 12.5 percent, during the 1981-85 period, in contrast to 11.9 percent for whites. But you will note how close these percentages are for all three groups, showing a terrible disparity on whites, Hispanics and blacks alike.

Black workers tend to have periods of joblessness after dislocation that are twice as long as the overall dislocated worker population and experience significantly higher earnings losses. The earnings losses for black blue-collar males are 50 percent higher, while income loss for white-collar and service sector black males, though fewer in numbers, is 2.8 times greater than the average. While female workers of all population groups have somewhat lower rates of dislocation, their periods of joblessness following dislocation are twice as long as for their male counterparts, and they are significantly more likely to drop out of the work force altogether.

Black workers who have had health insurance coverage prior to dislocation are at least 50 percent more likely to lose their coverage after losing their job.

But the number of economic losses tell only part of the story. Long-term unemployment leads to despair, illness, alcoholism, and other mental health problems; family breakdown and homelessness. The lack of economic opportunity leads especially in hard-hit communities and regions to forcing people into the underground cash economy, doing domestic work and day labor, collecting and hauling recyclables, and even perhaps into the underground illegal economy.

People are ingenious and live off of their wits. This is how people often survive, but it is a poor way to survive, with no benefits, no protections, and no way to plan for the future. It undercuts the American way of life and the American standard of living.

What can be done?

I want to particularly commend the authors of this initiative for its comprehensiveness and foresight. Not only are the provisions for worker retraining and education, rapid response teams to identify workers early, and income support during training essential, but so are too the provisions for advance notice and consultation with communities.

I know these latter provisions have been the lightning rods for your hearings thus far. But it is these provisions that will make it possible to both deliver effective retraining and other readjustment services and provide the opportunity to make a real contribution to improving productivity and competitiveness in the American economy.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Norton, with an attachment, follows:]

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Testimony

BY

Eleanor Holmes Norton

ON BEHALF OF

The National Committee for Full Employment

BEFORE

UNITED STATES SENATE

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY

COMMITTEE ON LABOR AND HUMAN RESOURCES

MARCH 20TH, 1987

Mr. Chairman and Members of the Committee, I am Eleanor Holmes Norton. Thank you for inviting me to appear here today on behalf of the National Committee for Full Employment (NCFE) and offer our views on the problems faced by dislocated workers and the need for a more comprehensive, federally assisted system for economic adjustment and retraining. I am accompanied today by NCFE Executive Director Calvin George.

I also serve as Chair of JOBS USA, an NCFE sponsored and newly established project working with broad-based local coalitions in six pilot states on developing innovative employment and training models for dislocated workers and new entrants to the work force, whose opportunities in the mainstream labor market are being severely constricted. I am confident that JOBS USA state coalitions will welcome renewed federal leadership on the employment policy front and would embrace the strong role given to states in the proposed Economic Dislocation and Worker Adjustment Assistance Act, S. 538.

As you know, Mr. Chairman, recent surveys by the U.S. Department of Labor's Bureau of Labor Statistics (BLS) reveal the enormity of the worker dislocation problems we face as a nation. The most recent BLS data clearly shows that between 1981 and 1986, 10.8 million workers lost their jobs due to business and facility closures and permanent lay-offs. Over 5 million of these workers had held the specific job they lost for 3 years or more, while countless others had extensive work experience on other jobs. We are experiencing large structural shifts in employment and unemployment among experienced workers, and the problems are getting worse not better. The rate of job loss has been higher in the 1980's than the 1970's and cannot be explained by traditional fluctuations in the business cycle. "Economic recovery" no longer means factories adding back the second and third shifts. And yet this image represents only part of the problem.

Contrary to popular perceptions, Mr. Chairman, economic dislocation is **not purely** a "rust belt" problem isolated in the highly industrialized Midwest and Northeast regions of the country and primarily affecting highly skilled and highly paid blue collar workers. Rather it is a national problem reaching into every state of the nation. Further, analysis of BLS data shows that the "rates of dislocation" are actually the highest in two regions of the South Central and the Rocky Mountain states. The industrial Midwest is actually the region with the fourth highest dislocation rate, though the absolute numbers of dislocated workers are greater there since overall that region has a larger workforce.

The National Committee for Full Employment has conducted its analysis of BLS data and reviewed other major studies to ascertain the impact of economic dislocation on the low/middle income, minority and female workforce. (A copy of the NCFE Special Analysis -- "Economic Dislocation and Adjustment: The Impact on Women and Minorities" -- is attached for your review and I ask that it be made a part of the record.) The NCFE Special Analysis shows:

- A majority of dislocated workers in the BLS survey or 55.5% had wages on their previous job below the average wage for all U.S. workers and the highest "rates of dislocation" can be found in the forty percent of the workforce below the average wage.
- Rates of dislocation are highest for Hispanic workers at 14.4% and blacks at 12.5% during the 1981 to 85 period, in contrast to 11.9% for whites.
- Black workers tend to have periods of joblessness after dislocation that are twice as long as the overall dislocated worker population and experience significantly higher earnings losses. The earnings losses for black, blue collar males are 50% higher, while income loss of white collar and service sector black males (though fewer in number) is 2.8 times greater than the average.

- While female workers in all population groups have somewhat lower "rates of dislocation" their periods of joblessness following dislocation are twice as long as for their male counterparts and they are significantly more likely to drop out of the labor force altogether.
- Black workers who had health insurance coverage prior to dislocation are at least 50% more likely to lose that coverage after losing their job.

But the numbers and economic losses tell only part of the story. Long-term unemployment leads to despair, illness, alcoholism and other mental health problems, family breakdown and homelessness. The lack of economic opportunity leads, especially in hard hit communities and regions, to forcing people into the "underground/ cash economy" doing domestic work and day labor, collecting and hauling recyclables, and the like. People are ingenious and live by their wits. This is how people often survive but it is a poor way to survive, with no benefits, no protections, and no way to plan for the future. It undercuts the American way of life and the American standard of living.

What can be done? The Economic Dislocation and Worker Adjustment Assistance Act (S.538) you are considering would put us on the right path. I want to particularly commend the authors of this initiative for its comprehensiveness and foresight. Not only are the provisions for worker retraining and education, rapid response teams to identify workers early, and income support during training essential, but so are too the provisions for advance notice and consultation with communities. I know these latter provisions have been the lightning rods of your hearings thus far. But it is these provisions that will make it possible to both deliver effective retraining and other readjustment services and provide the opportunity to make a real contribution to improving productivity and competitiveness in the American economy.

The goal of any adjustment policy, Mr. Chairman, must be to facilitate the rapid reemployment of dislocated workers in appropriate jobs. Successful adjustment means that there is limited or no unemployment experienced between jobs and that new jobs fully utilize dislocated workers' skills and allow them to maintain, as best as possible, their prior standard of living. A successful adjustment process also involves limiting a worker's income loss during the transition. (We must remember that American workers also constitute our domestic market for our own goods and services.)

The necessary ingredient in all of these efforts is time for planning, for implementation and for recruit ing. This requires advance notice. As an Office of Technology Assessment (OTA) report has stated:

> The best time to start a project for displaced workers is before a plant closes or mass layoffs begin; advance notice makes early action possible -- although it does not guarantee it. Some of the advantages of early warning are: (1) it is easier to enroll workers in adjustment programs before they are laid off; (2) it is easier to enlist managers and workers as active participants in displaced worker projects; (3) with time to plan ahead, services to workers can be ready at the time of layoff, or before; and (4) with enough lead time, it is sometimes possible to avoid layoffs altogether.

The OTA report further notes:

> Many company managers see advance notice as a benefit to the company itself, by improving relations with the remaining workers, enhancing the company's reputation in the community, and conforming with company values of fair and ethical treatment of its employees.

Recent reports by business organizations such as the Conference Board and the Committee for Economic Development also point out the importance of advance notice:

> Companies should provide as much notice as possible of decisions affecting jobs, particularly in cases of plant closings, work transfers, or automation. Advance notice allows employees the time to adjust, and management time to plan and implement business moves in a way that minimizes hardship. Companies should also take steps to notify the local community and state agencies of pending plant closings

> in order to allow time for a coordinated response. (CCED, pp. 44-55, emphasis in original).
>
> Both survey and interview participants note that advance notice is beneficial to employees and is an essential element in a plant closure program. . . . Notice is also critical because a functioning plant is perhaps, the program's single most important resource. (Conference Board, p. 7).

These, I believe, are well reasoned and balanced judgments and undergird the need for a comprehensive policy initiative.

In conclusion, Mr. Chairman, let me say that NCFE's sister organization, the Full Employment Action Council (which does take specific positions on proposed legislation) is prepared to assist you and others in broadening public understanding of and support for this initiative and believes that it deserves the highest legislative priority.

Thank you for asking us to appear here today. We would be glad to try to answer any questions you may have.

NCFE SPECIAL ANALYSIS:

Dislocation and Adjustment:

The Impact on Women and Minority Workers

PREPARED BY:

LAWRENCE MISHEL
ECONOMIST

CALVIN H. GEORGE
EXECUTIVE DIRECTOR

MARCH 26th, 1987

NATIONAL COMMITTEE FOR FULL EMPLOYMENT

American workers are now experiencing higher rates of permanent job loss than in the 1970's, the result of greater import competition and technological change and the slack labor market of the 1980's. Recent Bureau of Labor Statistics (BLS) surveys show that over 2 million workers are dislocated each year. Unfortunately, the recovery from the 1981-82 recession has not reduced the amount of dislocation affecting American workers, as there was as much job loss in 1985 as in 1983. Research based on these BLS surveys has shown that dislocated workers experience lengthy periods of joblessness, the loss of health insurance and reduced earnings in their new jobs, if and when a new job is found. As this report shows, minority workers are more likely to permanently lose their jobs and have more difficult time adjusting to this job loss. Although women workers experience proportionately less job loss than male workers, their adjustment experience is more difficult; women dislocated from their jobs experience longer joblessness and larger reductions in pay in their new jobs. This report presents information on the adjustment experience of women and minority workers and draws from research carried out by BLS and other government agencies.

Job Loss Among Minorities and Women

Minority workers experience disproportionately high rates of job loss due to business or facility closures or other permanent layoffs. This can be seen in the figures in Table 1 which show the percentage of the workforce experiencing dislocation in the 1981 to 1985 period, by demographic group.[1] Black workers are more likely than white workers to have lost their jobs, 12.5% vs. 11.9%. The group experiencing the greatest dislocation, however, is Hispanic workers, with 14.4% of the Hispanic workforce losing their jobs in this period. Women workers of each demographic group, on the other hand, have lower dislocation rates than comparable males. Overall, male workers are dislocated at a rate forty percent greater than female workers. However, as is shown below, women who are dislocated suffer much longer spells of joblessness than male workers; the result is that women experience more overall joblessness due to dislocation than men even though men lose jobs more frequently.

Table 1

Dislocation of Full-Time Workers by Race, Gender and Hispanic Origin, 1981-85

	Total With Work Experience (000's)	Worker Dislocation		Rates of Dislocation	
		Plant Closing (000's)	Total (000's)	Plant Closing	Total
Total	73,932	4,176	8,841	5.6%	12.0%
Male	43,295	2,678	5,905	6.2	13.6
Female	30,638	1,498	2,935	4.9	9.6
White	64,127	3,608	7,639	5.6	11.9
Male	38,183	2,349	5,188	6.2	13.6
Female	25,944	1,259	2,451	4.9	9.4
Black	7,952	454	992	5.7	12.5
Male	4,100	261	588	6.3	14.3
Female	3,852	192	402	5.0	10.4
Hispanic	4,188	288	601	6.9	14.4
Male	2,541	183	386	7.2	15.2
Female	1,647	105	215	6.4	13.1

Table 2 presents data on the average length of joblessness experienced following dislocation, broken down by occupation, gender and race.[2] Black workers, both male and female, have spells of joblessness following displacement that are at least twice what the average dislocated worker experiences. Among blue collar male workers, blacks suffer 30 more weeks of joblessness than the average worker. The result is that the _average_ black blue collar worker who lost his job was out of work nearly _13 months_, far greater than the lengthy spell of nearly half a year suffered by the average male blue collar worker. The disparity between black workers and the average worker is even greater among both male and female white collar and service workers. With proportionately more blacks losing their job and with greater joblessness following dislocation, it is clear that dislocation

Table 2

_Average Joblessness Following Displacement_*

	Blue Collar		White Collar & Service	
	Male	Female	Male	Female
Average Worker	25.1 weeks	44.7 weeks	12.4 weeks	23.1 weeks
Black Worker	55.1 weeks	97.4 weeks	38.8 weeks	61.1 weeks
Black/Average Ratio	2.20	2.18	3.13	2.65

* Average is median weeks without work.

Source: Michael Podgursky and Paul Swaim, "The Duration of Joblessness Following Plant Shutdowns and Job Displacement" August 1986, presented to the Eastern Economic Association, March 6, 1987.

has an impact on the black community that far exceeds that of the remainder of the population.

Women workers, both black and white, have prolonged spells of joblessness following dislocation. Blue collar women, on average, were without work for ten and a half months (44.7 weeks) after losing their job, an amount eighty percent longer than comparable male workers. Black female blue collar workers, of course, suffer double jeopardy -- race and gender -- and were jobless nearly two years.

Even though white collar and service workers suffered less joblessness than blue collar workers, the racial and gender disparities among blue collar workers holds true for them as well, with women and blacks experiencing far longer joblessness than comparable male or white workers.

Although fewer women percentage-wise experienced a job loss in recent years, those that did suffered jobless spells far longer than men. This holds especially true for black women. As a result, the amount of total joblessness created by dislocation is greater among women than among men.[3]

Unfortunately, there is not much detailed research on the Hispanic population. Some BLS tabulations, however, do indicate that Hispanic workers have great difficulty finding new jobs following displacement. Table 3 examines the labor force status of all workers displaced from 1979 to 1983 at the time of the first BLS survey -- January 1984. Hispanic displaced workers were less likely to have found new work and more likely to be unemployed than were displaced white workers. For black workers we see an even greater likelihood of being unemployed and an even lesser chance of having located new work.

Table 3

January, 1984 Force Status of Workers Displaced From 1979-83

	Reemployed	Unemployed	Not in Labor Force	Total
All	61.5%	24.7%	13.8%	100.0%
White	64.5	22.0	13.5	100.0
Black	42.0	42.4	15.6	100.0
Hispanic	55.7	30.2	14.1	100.0

Source: Department of Labor, Bureau of Labor Statistics, unpublished tabulations, Table 1, pp. 5-8.

Dislocation and Total Unemployment

An examination of BLS unemployment data shows that it is this greater job loss and joblessness following dislocation that has fueled the higher unemployment rates of blacks in the 1980's. Table 4 shows the unemployment rates for black adult workers, both male and female, in the relatively low unemployment years of 1973, 1979 and 1985. Also shown are the figures for the percentage of the black labor force who are unemployed because they lost their job in either a temporary or permanent layoff (other reasons for unemployment include those quitting jobs or those entering or reentering the labor force).

Table 4

Unemployment and Job Loss Among Blacks, 1973-1985

Adult Males	1985	1979	1973
1) Unemployment rate	11.9%	7.9%	5.5%
2) Unemployed due to a job loss	8.1%	5.1%	3.2%
Adult Females			
1) Unemployment rate	11.9%	9.6%	8.0%
2) Unemployed due to a job loss	4.8%	3.3%	2.5%

Source: U.S. Department of Labor, Bureau of Labor Statistics.

As with the overall unemployment rate, unemployment among black workers has risen as we have come out of the last two major recessions. In particular, unemployment among adult black males more than doubled from 1973 to 1985, allowing black men to pull even with black women by reaching a level of unemployment at 11.9% in 1985. Almost all of this increase is due to greater unemployment due to a job loss. Of the 6.4 percentage point increase in unemployment for adult black males in the 1973-85 period (11.9 less 5.5), more than three-fourths (8.1 less 3.2) was from greater unemployment attributed to job loss. Thus, greater job loss and the resulting unemployment is the key reason for greater black male unemployment.[4] On average in 1985, there were nearly 5% more of the black male labor force out of work due to a job loss than in 1973.

The black female unemployment rate rose less than the comparable male rate in this period, a rise of 2.9 percentage points from 1973 to 1985. Yet, this rise was also fueled by greater job loss, as eighty percent of the 2.9% rise in unemployment (2.3% of the 2.9%) arose from greater "job loser" unemployment.

It is reasonable to conclude that economic dislocation is a particularly difficult experience for black workers and it also a major contributor to rising black unemployment. Only efforts to reduce job loss and to minimize the length of male and female unemployment it creates will be able to reduce unemployment for both male and female blacks.

Earnings Losses

Dislocation creates hardships not only because of the lengthy joblessness that it creates but also because the majority of dislocated workers earn less in their new employment, if and when they find a new job. Research carried out by Professors Podgursky and Swaim of the University of Massachusetts for the Department of Labor allows us to examine the earnings losses of black and female workers dislocated in the 1979-83 period.

The figures in Table 5 show the reduction in weekly earnings experienced by dislocated workers when they found new jobs. The figures represent the percentage difference in the weekly pay of the new job and the weekly pay of the lost job, adjusted for average wage growth in the prior occupation in the intervening period. Table 5 shows that dislocated female workers who become reemployed do so with comparable or greater earnings losses than male workers. While blue collar workers, both male and female, had earnings losses of roughly 16%, women who lost white collar or service jobs experienced nearly double the earnings loss of men (16.2% vs. 8.7%) who lost jobs in these occupations. Older women and women with lengthy tenure on the job experienced greater earnings losses than the average dislocated woman worker and disproportionately greater losses than older and high seniority men who lost their jobs.

Table 5

Average Earnings Losses

	Blue Collar		White Collar and Service	
	Male	Female	Male	Female
1) Average	15.7%	15.8%	8.7%	16.2%
2) Ages 50-61	17.7	22.2	18.2	18.9
3) Seniority of 10 years or more	21.5	31.2	19.8	30.3

Source: Michael Podgursky and Paul Swaim, "Labor Market Adjustment and Job Displacement: Evidence from the January, 1984 Displaced Worker Survey," Final Report, Bureau of International Labor Affairs, U.S. Department of Labor, January, 1986. Table 7.

These data show that women workers who lose their jobs tend to experience as great or greater earnings losses than male workers in similar occupations. What's astonishing about this is that women workers received less pay than men on the jobs that were lost -- forty percent less in both occupational groups. Yet, even though women were dislocated from poor paying jobs they still managed to fall farther down the wage scale.

Black men also experienced greater than average earnings losses. Black men who lost white collar or service jobs experienced an earnings loss in their new job that was 16% greater than the loss experienced by comparable white workers. Similarly, dislocated black, blue collar workers had 8% greater earnings losses than comparable workers. Black women, however, experienced similar or slightly lower earnings losses than comparable white women workers who lost their jobs.

Overall, women and minority workers have greater difficulties in sustaining their prior standard of living when they are forced out of a job. That is, despite the fact that they earn less than male or white workers in the jobs they lose, they still manage to tumble farther down the economic ladder.

Conclusion

This paper has examined the adjustment experience of minority and women workers following dislocation. The average displaced worker experiences difficult problems following displacement, including lengthy joblessness and reductions in their standard of living. Yet, the adjustment experiences of minority and women workers are even harsher. Blacks are more likely to be dislocated, have at least twice the duration of joblessness following displacement and, at least for black men, experience far greater earnings losses when they become reemployed. Women lose jobs less frequently than men but because they suffer far longer spells of joblessness following displacement, their overall joblessness due to dislocation is larger. Moreover, women workers experience larger earnings losses than male workers.

ENDNOTES

1. This table is drawn from Larry Mishel, "Dislocation: Who, What, Where and When", presented at the Eastern Economic Association meetings in Washington, D.C. March 6, 1987, which explains the computation of these dislocation rates.

2. The BLS survey provides data on joblessness following displacement. Joblessness is the time spent unemployed and out of the labor force. Table 2 fi - are for workers displaced in the first three years covered by the January 1984 survey so that completed spells are examined. Black displacement computed as average median joblessness plus the additional jobless weeks of black workers as identified by the coefficient on the race variable in the duration of joblessness regressions reported in Table 4, p. 14.

3. One can construct a jobless rate, comparable to an unemployment rate, as the product of the incidence of joblessness (the dislocation rate) and the mean length of joblessness following displacement, assuming each dislocated worker is displaced only once each period. Such a rate would show that the longer spells of joblessness experienced by female blue collar workers leads to a jobless rate 30% greater than comparable males despite the fact that the female dislocation rate is 40% less than the male dislocation rate. Or, in other words, if one examines the total weeks of post-displacement joblessness of men and women relative to their size in the labor force, then women experience more overall joblessness.

4. The greater job loser unemployment can result from an increased percentage of the labor force entering unemployment and from longer spells of unemployment. Both increased in this period.

Senator **Simon**. I thank you.

I might say to Senator Quayle that Ms. Norton has to leave immediately, so I am going to take the liberty of just asking one question and then will yield to my colleague.

I note in your prepared statement you say, "The Economic Dislocation and Worker Readjustment Assistance Act, S. 538, that you are considering, would put us on the right path."

By implication, you are saying we are just starting, that this is not the end of where we have to go. Eleanor Holmes Norton—dreaming about what we might do as a country in the area of employment—where do we go? Where does the path lead us?

Ms. **Norton**. Mr. Chairman, after 15 years of serious structural unemployment in this country, it is amazing to find that we have allowed this problem to become an urgent matter and a catastrophe for millions of American families.

I am amazed that these modest steps have provoked controversy. I am one of several members of an anniversary panel on American technology and its effect on the work force. That panel is going to recommend mandatory plant closing legislation after looking carefully at what has happened to Americans over the past 15 years. One of the things that panel is concerned with is that Americans are likely to resist the very technology that is necessary to make us competitive if there is not greater response from the Congress to the inevitable dislocation that comes when one enters a period of transition.

Now, I am sure you will hear from other witnesses that European countries, our allies, are far ahead of us in taking steps to correct these problems of transition. I regard these steps as baby steps of the kind one would have expected a country with an advanced economy to have taken 15 or 20 years ago. I am not prepared to say precisely where it is we ought to leave off, but I cannot believe that a stable democracy believes it can remain stable without, for example, even letting people know that they are about to lose their jobs so they can find a way to make other arrangements and without even assisting them to find other jobs. What we will do, it seems to me, if we continue to let this matter fester, is to create grave discontent upon large numbers of people who have had jobs all their lives, and in the final analysis to begin to create the kinds of class distinctions in the society that have never been known before. I hope we will take action before that day comes.

Senator **Simon**. Senator Quayle.

Senator **Quayle**. Thank you, Mr. Chairman.

First, I would like to ask unanimous consent that my statement be made a part of the record at the very beginning.

Senator **Simon**. It will be.

Senator **Quayle**. In view of Ms. Norton's time constrictions, let me just ask one question.

Let me just follow up on your statement concerning the transition when these people unfortunately find themselves in an economic dislocation and how we are going to get from here to there, in other words, find them a new job opportunity.

One of the things that is in the Readjustment Assistance Program is the early intervention, which I think is the key. If we know there is going to be a plant closing—and we hope that it is not, but if it is going to happen, and it happens from time to time; it is just the nature of our society—one of the things that readjustment assistance is trying to do is to push forward and to get early intervention, even while they have a job in the current plant. That is in this legislation.

I just wondered whether you support moving this legislation forward as quickly as possible. I would assume that you would support this legislation—I am not talking about the plant closing piece; I am talking about the readjustment assistance—that you would support this legislation, and you would, I would think, support the idea of early intervention. And wouldn't it be helpful to have early intervention. In my own home State of Indiana, for example, in Indianapolis, unfortunately, we have had three major plants close in the last year and a half—Western Electric, RCA and now Chrysler. We have got a corridor there that we are trying to work with, and there is a very limited amount of funds that we have in the Title III right now. This new bill would certainly give us some additional funds.

Don't you think it would be helpful in trying to get this transition, if the Congress would move as expeditiously and as quickly as possible on this readjustment assistance to get it in the pipeline, to get the program going so we can help these people who desperately need our help?

Ms. NORTON. Senator, I am not sure how one can give early intervention unless one knows a plant is going to close. Perhaps you should clarify what you mean.

Senator QUAYLE. I think in those cases where you do know the plant is going to close, you can. I can give you an example in my State. Chrysler—they have already given notification. You would be surprised at how many businesses do that already; a lot of them do.

Ms. NORTON. Oh, I would not be surprised at all. A lot of them, precisely because——

Senator QUAYLE. Yes, a lot of them do. I can give you an example of Chrysler, a case-in-point, in my home State. They have announced this fall that they are going to close the plant. If we would have this legislation as early as possible, we could begin the early intervention.

Ms. NORTON. That is right. I would not be——

Senator QUAYLE. And I am sure that there are other examples around the country, and probably even some more in my State. I just happen to know about this right now. And therefore, in those cases where we do have advance notification and we do have this opportunity for early intervention, won't this legislation be of assistance, and shouldn't we try to move this as quickly as possible?

Ms. NORTON. Well, I can think of nothing that would create more bitterness than the notion that if you happen to be where a corporation gives advance notice or where a State requires it, you can get early intervention, but if you happen to be where it is not required, then of course early intervention is not going to be possible for you at all, because the plant is going to close before you even know anything about what is going to happen to your life.

So I think that the Congress has to look at this at least in the modest comprehensive way that is represented in this bill.

Senator **Quayle**. So in other words, you think as far as getting the money into the pipeline early on, that is not an important priority?

Ms. **Norton**. It is of the utmost importance. Therefore you ought to pass this entire bill as soon as possible.

Senator **Quayle**. Okay. But it is important to get the money out there——

Ms. **Norton**. It is important finally for this Congress to pass a bill that is sufficiently comprehensive so that the American people can believe that you take this problem seriously. And to do that, all you have to do, it seems to me, is to take this bill as it now is and pass it through this Committee and get it on the Senate Floor and get it all over with, and stop getting bogged down in controversy over one section or the other of it.

If in fact this Committee and the Senate are serious about this problem and have an understanding about the pain that is out here, the modest step that is represented by this comprehensive bill is the way to show it.

Senator **Quayle**. Well, I would hope that you would agree that the readjustment assistance portion of the bill is a sincere recognition of the problem, is a sincere effort to try to alleviate some of the pain and harm and dislocation that is out there; that it is in fact a real effort to say that we have got a problem, and here is a way that we think that——

Ms. **Norton**. I can think of nothing that would make people more bitter than to know that for those who happen to be in a position to know that a plant is going to close, there are benefits available, but for those who happen not to be in that position, there are no benefits available. I think you should make a level playing field. I think you should make these benefits available across State lines. I think you are way too late in doing it. I think the issue is overripe. I think the entire bill comprehensively ought to be passed. I think it could easily be done, and that is what I think you ought to set about doing right away.

Senator **Quayle**. But this readjustment assistance is not only just early intervention. I mean, it applies to training and to education and to working with the dislocated worker whether they are employed or not. I mean, the definition within the legislation of a dislocated worker is one who has no real chance of going back to his or her place of employment. You are talking about an additional $980 million. And I believe that——

Ms. **Norton**. Do you think any part of that money ought to be held hostage while the Congress debates back and forth over another part of the bill?

Senator **Quayle**. No. I think it ought to go forward.

Ms. **Norton**. I do, too, and I think the whole thing ought to go forward.

Senator **Quayle**. I think it ought to go forward, too. That is my point.

Thank you, Mr. Chairman.

Senator **Simon**. Senator Adams.

Senator **Adams**. Thank you, Mr. Chairman.

I do not have any questions of the panel. I just want to indicate that in regard to the proposition that you are advancing, we have enormous dislocation in the State of Washington, and as one industry after another closes, we do not have a comprehensive manner of approaching this. So I agree with your comments that you have just made, and I hope that we move forward, Mr. Chairman.

Senator SIMON. Thank you very much.

Ms. NORTON. Thank you very much, Mr. Chairman. May I be excused?

Senator SIMON. Thank you, Ms. Norton. Yes, you may.

Mr. Yzaguirre.

Mr. YZAGUIRRE. Senator, my name is Raul Yzaguirre. I am the President of the National Council of La Raza. With your indulgence, I would like to submit my full testimony for the record and try to summarize.

Senator SIMON. It will be entered in the record.

Mr. YZAGUIRRE. The National Council of La Raza is an umbrella organization for some 100 organizations that serve about one million Hispanics throughout the country. Throughout our history, we have been concerned about education and employment in our community, for a variety of reasons. One of them is because Hispanics have the lowest hourly wages of any group in this country and the lowest level of education of any group in this country.

We are also concerned about this particular piece of legislation because dislocation is a very serious Hispanic issue. Dislocation rates among the major population groups are as follows. For Hispanics, it is 14.4 percent; for blacks, it is 12.5 percent; and for whites, it is 11.9 percent. In other words, we have a dislocation rate that is 21 percent higher among Hispanics that it is for whites.

What is also even more interesting and of concern to us is that when you look at dislocated workers in terms of how long they have been on the job, how much of a crisis this is in their entire lives, we find that it is a greater crisis for Hispanics.

The average length of employment prior to dislocation is 7.3 years for Hispanics, 7.0 years for whites, and 6.6 years for blacks. This dislocation rate for Hispanic women was 39 percent higher than for white women and 26 percent higher than for black women. Four States in which 30 percent of Hispanics live were among the top 20 for rates of overall worker dislocation. These include Texas, Arizona, Colorado, and your own State of Illinois.

Once dislocated, Hispanics remain unemployed or drop out of the labor force in greater numbers than whites or blacks. Hispanic women were most devastated by dislocation. They were 28 percent more likely than white women to have dropped out of the labor force.

Senator, we support the definitions of dislocated workers as proposed in the legislation. We would urge, however, that the Act be amended to specifically include farm workers among the eligible dislocated workers. Farm workers along with farmers may be affected by "general economic conditions" or natural disasters. Thousands of Texas farm workers lost jobs after the 1984 freeze, which not only killed the crop but also killed the trees. In addition, mechanization and real estate development are major factors affecting farm worker dislocation.

We also encourage the Secretary of Labor to consider economic conditions particular to southern border regions. The highest unemployment rates in the country occur in South Texas. These regions are negatively affected by economic conditions such as the devaluation of the Mexican peso, which often leads to widespread business failures by making American goods too expensive for most Mexicans and Mexican goods much less expensive for Americans.

The National Council of La Raza supports the establishment of a dislocated worker unit in the Department of Labor. We support the establishment of State dislocated worker units with emphasis on rapid response. We support a genuinely tripartite advisory committee at the State level.

We recommend that the tripartite advisory committee include representatives of racial and/or ethnic communities and geographic areas experiencing high rates of unemployment in the State.

We support the inclusion of a comprehensive package of services to dislocated workers. In order to reach those most in need, community-based organizations must be part of the delivery services. A previous speaker talked about the importance of including the PICs, but the reality is that the JTPA program has witnessed a very significant lower participation rate among Hispanics than its predecessor program. And one of the major reasons for this decrease in participation by our community has been the failure to involve community-based organizations. And one of the reasons why we have more "creaming" in this program than we have had before is because community-based organizations who have been shown to have been more capable of reaching the hard-to-employ are simply squeezed out of this program.

Many dislocated workers, Hispanics in particular, face obstacles to reemployment. They include language barriers, lack of education and basic skill training, limited access to education and employment and training opportunities. These obstacles must be removed to facilitate successful participation in the labor market.

Therefore, we strongly support the bill's provision regarding basic education and literacy instruction. Senator, we support the basic funding levels included in the bill.

Let me talk briefly about two controversial aspects of the bill, one having to do with advance notice, and the other one, consultation.

We support the notion of advance notice. Evidence in other countries shows that it clearly helps mitigate the serious problem.

In terms of the question and the issue of consultation, we generally support the concept. We are simply uninformed as to the practical applications and are not in a position to take a stand on this particular aspect of the legislation.

Let me conclude by saying that Hispanics have the highest rates of dislocation, the lowest rates of reemployment after dislocation. Therefore, it is critical for this legislation to pass, and we urge you to pass it expeditiously.

Thank you, Senator.

Senator SIMON. Thank you.

[The prepared statement of Mr. Yzaguirre follows:]

TESTIMONY ON

THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT
S. 538

Presented By

Raul Yzaguirre
President
National Council of La Raza

Before the

Subcommittee on Employment and Productivity
of the
Committee on Labor and Human Resources
United States Senate

March 26, 1987

NATIONAL COUNCIL OF LA RAZA
Number 20 F Street, N.W.
Second Floor
Washington, D.C. 20001

NATIONAL COUNCIL OF
LA RAZA
OFFICE OF RESEARCH
ADVOCACY AND LEGISLATION

I. BACKGROUND

Mr. Chairman, members of the Subcommittee, my name is Raul Yzaguirre and I am President of the National Council of La Raza, one of the largest national Hispanic organizations. I appreciate the opportunity to appear before you to express our support for S.538, the "Economic Dislocation and Worker Adjustment Assistance Act." The National Council of La Raza exists to improve life opportunities for Americans of Hispanic descent and is a private, nonprofit organization representing over 50 local Hispanic community-based organizations serving 32 states and the District of Columbia. The majority of these organizations are directly involved with employment or education issues, and all of them view employment as one of the most critical problems facing Hispanic Americans.

As recent Bureau of Labor Statistics (BLS) data reveal, and as other witnesses have pointed out, the problem of worker dislocation in this country has reached a critical stage and continues to grow. Other witnesses have pointed out the very large numbers of workers suffering permanent job loss due to plant closings, mass layoffs and other general economic conditions. You've also heard that, contrary to earlier assumptions, worker dislocation is not a problem particular to the Northeast and highly industrialized Midwest, but rather a problem of national scope. In fact, the highest rates of worker dislocation occur in the South Central and Rocky Mountain regions. Other statistics have been or will be presented to you which emphasize the depth of this problem for the nation as a whole.

II. HISPANIC DISLOCATION RATES

What other witnesses may not have pointed out, Mr. Chairman, is that Hispanics suffer a higher rate of dislocation than any other major population group. An analysis of BLS data reveal that, between 1981 and 1985, Hispanics suffered dislocation at a rate of 14.4%, compared to 12.5% for Blacks and 11.9% for Whites. Thus the overall rate of dislocation for Hispanics was 21% higher than for Whites. Although women tend to have lower dislocation rates than men, Hispanic women are especially hard-hit. The overall dislocation rate for Hispanic women was 39% higher than for White women and 26% higher than for Black women. Four states in which 30% of all Hispanic Americans live -- Texas, Illinois, Arizona, and Colorado -- fell within the "top 20" for rates of overall worker dislocation.

Hispanics have the dubious distinction of higher dislocation rates both from plant closings and from other causes. Between 1981 and 1985, Hispanics were 23% more likely than Whites to lose their jobs through plant closings, and 17% more likely to lose their jobs due to other causes. Hispanics not only experience higher rates of worker dislocation, but once dislocated, they also remain unemployed or drop out of the labor force in greater numbers than either Blacks or Whites. Data from the Bureau of Labor Statistics reveal that, among Hispanic workers dislocated between January 1981 and January 1986, only 56.6% were re-employed as of January 1986, compared to 57.7% of Blacks and 68.2% of Whites. Hispanics were 39% more likely than Whites to have had no job since being displaced. Hispanic women are the group most devastated by dislocation, with only 42.3% re-employed as of January 1986. As of January 1986 25.9% of dislocated Hispanic women remained unemployed and another 31.8% had dropped out of the labor force entirely. Dislocated Hispanic women were 28% more likely than White women to have left the labor force.

III. RECOMMENDATIONS FOR THE BILL

Because our community leads the nation in job loss through dislocation, Hispanics are extremely concerned that dislocated worker legislation recognize the magnitude of the problem among Hispanics and include appropriate components to attack it. Allow me to make some specific recommendations.

A. Definition

The JTPA Amendments of 1986 and this legislation wisely broaden the definition of dislocated workers to include self-employed workers and displaced homemakers. To ensure that all displaced workers in need of assistance are covered, we urge that the Act specifically include in the definition of eligible dislocated workers farmworkers who may, along with farmers, be affected by "general economic conditions" or "natural disasters." For example, we know that many thousands of Texas farmworkers lost their opportunity for employment after the Christmas freeze of 1984 killed not only South Texas citrus crops but also the trees themselves. We also encourage the Secretary of Labor to consider the economic conditions particular to our southern border regions. Portions of South Texas consistently register the highest unemployment rates in the nation, and these regions are often negatively affected by economic conditions such as the devaluation of the Mexican peso. We know that repeated peso devaluations have led to widespread business failures in the border states, by making American consumer goods too expensive for most Mexicans and making Mexican consumer goods much less expensive for Americans. In some border towns in South Texas and California, the majority of retail stores either face bankruptcy or have already gone out of business.

B. Coordination Mechanisms

A coordinated effort is essential to combat the problem of worker dislocation. Therefore, the Council strongly supports the establishment of a Dislocated Worker Unit in the Department of Labor. The creation of state dislocated worker units with an emphasis on rapid response is also a critical step toward reducing the human and economic costs of large-scale, long-term unemployment. A genuinely tripartite advisory committee at the state level will also facilitate effective and equitable program administration under this Act. We would add that states should also include in these committees representatives of racial or ethnic communities and geographic areas experiencing high rates of unemployment in the state. This will help assure that state responses reflect the special needs of those with the greatest problems.

C. Service Needs and Involvement of Community-Based Organizations

The bill's provision to include a comprehensive package of services to dislocated workers gives states the opportunity to allocate resources where they are most needed and provide the most appropriate services given local needs. . However, if those most in need of services are to be reached, community-based organizations must be a part of the delivery of services. Community-based organizations with long-standing experience and expertise are in a unique position to provide linkages with the economically disadvantaged in their communities. The Council believes that a major failure of past programs for dislocated workers has been the underrepresentation of minority community-based organizations as service providers. Many dislocated workers today, and Hispanics in particular, face significant obstacles to re-employment, including language barriers, lack of basic educational and literacy skills, and limited access to education and employment and training opportunities. If Hispanics are to become successful participants in the labor market, these obstacles must be removed. We therefore strongly support the bill's provision regarding basic education and literacy instruction, and we urge a strong role for community groups in providing such services.

D. Funding Issues

We are pleased to see that the proposed legislation recognizes that an effective program dealing with issues of worker adjustment requires a substantially higher level of funding than is currently available. While the $980 million proposed in this bill will not meet the needs of all eligible dislocated workers, we welcome this allocation as an important foundation on which future efforts may build. We also urge recognition of the fact that effective dislocated worker programs are a human resource investment which will, in the long run, lead to decreased costs for unemployment and public assistance and increased tax revenues.

The Council supports the allocation of 30% of the authorized funds for discretionary or exemplary and demonstration programs. However, we also believe that there is room for expansion of these very valuable elements of the legislation; limiting the programs to no more than five to ten sites each may not achieve the goal of increasing the employability of significant numbers of dislocated workers. We also realize that this would require additional funding and we encourage the Subcommittee to consider providing it. We expect that, in giving priority to communities with the highest concentration of dislocated workers, the Secretary will recognize the disproportionately high rate of dislocation among Hispanics and allocate funds for demonstration, exemplary and discretionary programs accordingly. In the past, Hispanics have seldom been adequately targeted by demonstration efforts, and we support legislative language recognizing the need for discretionary funds to focus on particular subgroups as well as communities.

E. Advance Notice

Title II of the Economic Dislocation and Worker Adjustment Assistance Act represents a critical, though controversial, aspect of this legislation, as has been demonstrated in earlier hearings. There appears to be general agreement on the importance of advance notice by employers in the event of a proposed closing or layoff of substantial numbers of employees. Debate occurs over whether such a provision should be mandatory or voluntary. The report of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation states that "advance notification is an essential component of a successful adjustment program." Available evidence reveals that advance notification works well in other countries and that it may be an advantage to business. Advance notice provides time to explore alternatives to proposed layoffs and, when layoffs are inevitable, to allow for adequate planning, implementation and recruiting for worker retraining and adjustment programs. The National Council of La Raza supports the provision in S.538 which requires an employer to provide advance notice of a proposed closing or mass layoff.

Regarding the companion to advance notice — consultation — we generally favor the notion of labor-management cooperation and communication prior to any proposed closing or layoff. However, until further investigation of the specific consultation provisions of S.538 takes place, we are not able to take a position on these provisions.

IV. CONCLUSION

Since Hispanics have the highest rate of worker dislocation and the lowest rate of re-employment after dislocation, it is critical that legislation recognize and respond to their needs. The Economic Dislocation and Worker Adjustment Assistance Act is a vital piece of legislation with the potential to provide a valuable investment in human resources. We appreciate the opportunity to present our views and we thank the Chairman for his support of human resource development programs for unemployed and low-income people. As always, the National Council of La Raza stands ready to assist the Subcommittee in whatever way possible.

Senator **Simon**. Thank you.

Donna LeClair, President-Elect of the Displaced Homemakers Network.

Ms. **LeClair**. Thank you.

I am Donna LeClair, President-Elect of the Displaced Homemakers Network. I am also the State Coordinator for the Displaced Homemaker Program in the State of Massachusetts.

Displaced homemakers are primarily middle-aged and older women who have lost their unpaid jobs as homemakers upon the death, divorce, separation or disability of their spouse, or upon the loss of long-term public assistance. Too young for Social Security and ineligible for unemployment insurance, they fall through the cracks of our society.

Typically, they have families to support, and even more typically, they need job training in order to secure employment that will allow them to support themselves and their families. If each person here today were to stop and think about it, they would probably find that it is an issue that has touched their own lives and that they know someone who is a displaced homemaker. They are our widowed aunts and our divorced sisters. They are also the wives of dislocated workers.

Displaced Homemakers Network is the only national organization working at the local, State, regional and national level which addresses the specific concerns of displaced homemakers. The Network represents more than 900 local displaced homemaker programs operating in local communities throughout the country and advocates on behalf of the millions of displaced homemakers who are struggling to make the transition into the paid labor force.

But the barriers they face to employment are substantial. As a report on displaced workers, recently published by the Congressional Office of Technology Assessment notes: "Barriers to employment are higher for displaced homemakers than for the mainstream displaced workers, because many have little experience in a paid job. The women seeking services from displaced homemaker programs are a diverse group," the report says, "and a comprehensive program of services is desirable, particularly one that combines personal counseling with job-readiness and skills training."

The report also notes that a considerable number of displaced homemakers need remedial or brush-up courses in reading and math to qualify for training or good jobs. However, many displaced homemakers cannot take advantage of the training and education open to them because of lack of income support. Most are not eligible for unemployment insurance, and few have income from other family members.

The Displaced Homemakers Network appreciates the opportunity to testify on Senate 538, the Economic Dislocation and Worker Adjustment Assistance Act and the Worker Readjustment Assistance Act. We agree that now is the time to provide training and retraining for all displaced workers if America is to be competitive.

We are extremely pleased to see that Senate 538 defines displaced homemakers as eligible for training services, and we urge the members to assure that this eligibility be included in the final legislation as enacted.

Displaced homemakers are dislocated workers. They have lost their former jobs to which they cannot return. They need training and retraining to obtain employment that will replace their lost income in order to support themselves and their families. They differ from workers dislocated by plant closings only in that they do not have a pink slip. Instead, they have a death certificate or a divorce decree, after having worked for many years as unpaid workers who have contributed substantially to their families and communities. It would be both cruel and unfair to deny displaced homemakers access to employment and training services they need.

Several States—Florida, New York and Louisiana, for example—have recognized that displaced homemakers are dislocated workers and have defined them as such in the Governors' Coordination and Special Services Plan. These States can utilize JTPA Title III dislocated worker funds to support displaced homemaker programs.

Many of our local displaced homemaker programs are in communities that have experienced plant closings or farm bankruptcies in the last few years. The displacement of workers and farmers many times directly results in the displacement of homemakers. Our programs report a continuing increase in the number of women who are forced to leave their jobs as homemakers because of layoffs, plant closings, or the declining farm economy.

The economic hardship that results from worker dislocation causes great stress and sometimes breakup of a formerly stable family.

In Beaver County, Pennsylvania, a community hit by numerous plant closings, a program for dislocated workers was initiated in 1982. Darlene Kaplan, coordinator of the Midland Center for Career Development, reports: "There were so many women coming to us for help that we were compelled to design a program for the women affected by the plant closings, specifically, displaced homemakers and single parents. These women were not sheltered from the impact of the plant closings, which goes far beyond the worker. It affects the worker's family and community as well. The women coming to the program were experiencing increased rates of divorce, domestic violence, drug and alcohol abuse, and the employment and training needs of these women were great. Because many of these women had never finished high school, the remedial education assistance as well as counseling and support services, were needed so they could enter the work force."

We applaud Senator Metzenbaum, Senator Simon, and other Committee members for their continuing efforts to assure that displaced homemakers have access to training that will lead to economic self-sufficiency.

However, we are concerned that the Worker Readjustment Assistance Act proposed by the Administration and also under consideration by this Committee does not specifically name displaced homemakers as an eligible population. The Displaced Homemakers Network cannot support a program that excludes displaced homemakers. We would hope that the eligibility of displaced homemakers under the Worker Readjustment Assistance Act would be clarified at today's hearing.

Thank you for this opportunity to testify before you on this pressing need. If America is to be truly competitive, we must be sure that all displaced workers, regardless of the cause of displacement, have access to available training and retraining services.

Thank you.

Senator **Simon**. We thank both of you.

One question—and I do not know that either of you have the answer for this. In your statement, Mr. Yzaguirre, I notice you said women tend to have lower dislocation rates than men. I thought maybe it was a typographical error, and I checked with the staff, and your statement is correct.

Do either of you have any theories as to why that is the case?

Mr. **Yzaguirre**. I think it has to do with labor force participation, which is higher among men than it is women, and the traditional roles of women. But the impact when it does happen, of course, is devastating, particularly when you are talking about now you only have one income to depend on. It may be more important to look at some of the problems that women have, if they are the only income source.

Senator **Simon**. Ms. LeClair.

Ms. **LeClair**. The only thing I might add is that in layoffs, the company would usually start at the bottom, and that is primarily where a lot of the women are in the companies, particularly service and manufacturing types of jobs.

Senator **Simon**. Senator Adams.

Senator **Adams**. Thank you, Mr. Chairman.

Mr. Yzaguirre, I have one question, and you can submit your answer for the record if you would like to spend a little time on it. You mentioned that you would like to have farm workers included within the Act. Now, we have a number of seasonal farm employees in the State because of the orchards and so on. Would you like to submit to us your suggestions as to how we might define a dislocated or terminated employee if we were to approach the farm worker problem, because we have a different definitional problem than what is generally contemplated in this bill.

Mr. **Yzaguirre**. We would be happy to submit additional testimony and further facts and greater technical detail on the subject.

But let me just say that I think what we are talking about is not so much the seasonal changes and seasonal unemployments but rather when there is clearly, as there was in the Rio Grande Valley and many other places, clearly an abolishment of jobs on a permanent basis—that is, if people can no longer go to Illinois to pick tomatoes because those farmers are no longer planting tomatoes, and they cease to be in that economy, then that is what we will be talking about.

Senator **Adams**. That is why I wanted you to submit to us in writing the manner in which you would handle it, because I thought that was what you were discussing were the complete termination of an entire agricultural industry within an area as opposed to what might be a moving group of workers.

I just might state, Mr. Chairman, that I appreciate the testimony of the witnesses. I have a concern not only in the area of timber, aluminum and potentially in the agricultural community because we do have a shifting type of employment. I am also very concerned about what are now some Federal employees. We have facilities like the nuclear facilities, which many of them are going to have to change or be closed, and I do not think we have thought about some of the impacts that we might be able to use this bill for because the establishment of movement of people, ranging all the way from construction people to engineers and the complete termination of their jobs are distinct possibilities.

Senator **Simon**. And if I could just comment on your last remark, you do not need to go any further than the United States Senate, when not too many months ago, there was a budget problem, and all of a sudden, without notice, a number of employees of the Senate just lost their jobs. They need protection as well as everyone else.

Mr. Yzaguirre, if I may ask you one question that is not related to this hearing, but since you are President of La Raza, and I am on the Immigration Subcommittee. Part of the new bill and the new regulations by the Immigration and Naturalization Service is a $185 fee plus $420 overall fee per family, not counting family members over 18 or grandmothers, sisters, and other relatives.

What is your reaction to that fee schedule that INS has suggested?

Mr. **Yzaguirre**. Thank you for your interest in that matter because it is of great importance to us.

Senator, it is high. Those fees are high. But actually, we are more concerned with other aspects of the fee structure. We are concerned that the Government is asking the INS to have a self-reimbursing, self-financing method. But it is asking the nonprofit organizations that are going to do the bulk of this processing to limit their fees to applicants to something in the neighborhood of a $75 cap, plus another $15 that they will give them, plus another $25 or so they can charge on top of that—so less than $150 is all that the local nonprofit organization who has to do all the work can charge the individual applicant. And it is impossible for the nonprofit organizations to be able to do that kind of processing for that kind of money. And that amount is a cap, not an average. So that it makes it doubly difficult and in general, Senator, we are just very concerned that the INS is doing everything it can to obstruct the intent of Congress on this matter.

Senator **Simon**. Well, we would be very interested, and obviously, we are going to have to move quickly, in any observations you have on not only the fees, but anything else. If you could get any specific suggestions to my staff and that of Senator Kennedy and Senator Simpson, we would appreciate it.

Mr. **Yzaguirre**. I certainly will.

Senator **Simon**. We thank both of you for your testimony. We will hold the record open for ten days for any additional written testimony anyone may wish to submit.

Mr. **Yzaguirre**. Thank you.

[Additional material submitted for the record follows:]

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24 March 1987

The Honorable Paul Simon
Chairman, Subcommittee on
  Employment and Productivity
United States Senate
644 Dirksen Senate Office Building
Washington, D.C. 20510

Attention: William Blakey

Dear Senator Simon:

Thank you for the invitation to testify before the Joint Hearing of the Subcommittee on Employment and Productivity and the Subcommittee on Labor on March 26, 1987. Unfortunately due to time constraints and costs, I am unable to appear in person. Therefore, I am submitting the enclosed testimony for the committee's consideration.

The work that your committee is undertaking to aid the dislocated worker is important. It is in particular a major topic in our area because of our dependency on the wood products industry. There are numerous changes occurring in the wood products labor force. Declines in the wood products industry have far reaching effects into all aspects of our community.

We enjoy a positive working relationship with our local wood products labor unions. We have a team commitment to deal with the problems facing dislocated workers.

Thank you for providing us the opportunity to submit this testimony. Your staff, William Blakey and Carla Williams, have been very helpful.

Sincerely,

Chris E. Pryor

Chris Pryor
Chair

TESTIMONY OF
CHRIS PRYOR, CHAIR
SOUTHERN WILLAMETTE PRIVATE INDUSTRY COUNCIL
EUGENE, OREGON
PRESENTED TO THE JOINT HEARING OF
SENATE SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY
AND
SENATE SUBCOMMITTEE ON LABOR
MARCH 26, 1987

I AM HONORED TO ENTER THIS TESTIMONY FOR YOUR CONSIDERATION IN REGARDS TO PENDING LEGISLATION AFFECTING DISLOCATED WORKERS. I APPLAUD YOUR ATTENTION TO THIS VERY SERIOUS MATTER. IT IS AN ISSUE OF GREAT IMPORTANCE. THE DISLOCATION OF WORKERS OBVIOUSLY HAS SEVERE IMPACT ON THE INDIVIDUAL; IT AFFECTS THE COMMUNITY'S ABILITY TO RESPOND AND SURVIVE; IT AFFECTS OUR NATION'S COMPETITIVENESS.

THE SOUTHERN WILLAMETTE PRIVATE INDUSTRY COUNCIL IN LANE COUNTY, OREGON, HAS MANY YEARS OFFERING DISLOCATED WORKER SERVICES.
I TESTIFY TO YOU WITH ORGANIZATIONAL EXPERTISE ON THE NEEDS AND CHALLENGES ENCOUNTERED BY DISLOCATED WORKERS.

TESTIMONY: CHRIS PRYOR
MARCH 26, 1987

OUR COMMUNITY IS PRIMARILY WOOD PRODUCTS DEPENDENT. THE ECONOMIC RECESSION THAT MOST OF THE COUNTRY EXPERIENCED IN THE EARLY 1980S WAS A DEPRESSION FOR OUR COUNTY. OUR WOOD PRODUCTS INDUSTRY WAS SEVERELY UNDERCUT BY A DECREASE IN DEMAND DUE TO THE DECLINE IN HOUSING STARTS. EVEN THOUGH WE ARE SEEING IMPROVEMENTS IN THIS AREA, WOOD PRODUCTS JOBS ARE STILL BEING LOST DUE TO FOREIGN TRADE, NATIONAL ADJUSTMENTS (SHIFT TO THE SOUTH), AND TECHNOLOGICAL ADVANCEMENTS. AUTOMATION WILL CONTINUE TO ADVERSELY IMPACT OUR LOCAL WORKERS.

I APPLAUD YOUR COMMITMENT TO THIS AREA OF CRITICAL NATIONAL CONCERN BOTH IN TERMS OF TIME AND RESOURCES. I HAVE THE FOLLOWING SPECIFIC COMMENTS TO OFFER:

DESIGNATED SERVICE DELIVERERS

IN SOME AREAS, SUCH AS OURS, PRIVATE INDUSTRY COUNCILS HAVE BEEN DELIVERING EFFECTIVE DISLOCATED WORKER PROGRAMS. CERTAINLY YOU WANT TO BUILD ON THE LEARNING EXPERIENCES WE HAVE ALREADY EXPERIENCED. I SUGGEST THAT WHEN A SUCCESSFUL DISLOCATED WORKER PROGRAM EXISTS, YOU ENCOURAGE THE GOVERNOR TO GIVE SERIOUS CONSIDERATION TO MAINTAINING THE DELIVERY AGENT.

S. 538 LEAVES THE DESIGNATION OF SERVICE DELIVERERS OPEN TO THE GOVERNOR. THE ADMINISTRATION'S BILL DESIGNATES THE PRIVATE INDUSTRY COUNCIL WITH SOME VARIATION. I SUGGEST THAT YOU GIVE THE PRIVATE INDUSTRY COUNCILS (WHERE THEY HAVE BEEN ALREADY RUNNING THE PROGRAMS) THE RIGHT OF FIRST REFUSAL. THIS SUGGESTION ALLOWS FOR DESIGNATION OF THE APPROPRIATE BODY, BUILDS ON PREVIOUS EXPERIENCE, DOES NOT REINVENT THE WHEEL, YET ALLOWS FOR AREAS WHERE THE PRIVATE INDUSTRY COUNCILS DO NOT WISH TO BE INVOLVED.

INVOLVEMENT OF THE PRIVATE INDUSTRY COUNCIL

WE HAVE FOUND THAT BY HAVING OUR PRIVATE INDUSTRY COUNCIL ADMINISTER BOTH TITLE II AND TITLE III (DISLOCATED WORKER PROGRAM) RESOURCES UNDER THE JOB TRAINING PARTNERSHIP ACT, WE HAVE INTEGRATED BETTER SERVICES. WE DO JOINT JOB SEARCH EFFORTS AND JOINT VOCATIONAL TRAINING. THE EMPLOYER SEES A STREAMLINED EFFICIENT OPERATION AND IS NOT CONFUSED AS TO WHAT ORGANIZATION HAS THE POTENTIAL TO TRAIN NEW EMPLOYEES FOR JOB OPENINGS. THE SHARED COST ASPECT OF THE VOCATIONAL TRAINING ALLOWS US TO LEVERAGE MORE SERVICES TO MORE PEOPLE.

TESTIMONY: CHRIS PRYOR
MARCH 26, 1987

EVEN IF A PRIVATE INDUSTRY COUNCIL WERE NOT THE DELIVERER OF DISLOCATED WORKER SERVICES, THE PRIVATE INDUSTRY COUNCIL SHOULD BE CONSULTED BECAUSE IT IS A RESOURCE FOR THE FOLLOWING:

I. LABOR MARKET INFORMATION ABOUT THE COMMUNITY
II. INFORMATION ABOUT EDUCATIONAL AND TRAINING SERVICES AVAILABLE IN THE COMMUNITY;
III. MATCHING TRAINING NEEDS TO PROGRAMS AVAILABLE.

FURTHERMORE, WORKING WITH THE LOCAL PRIVATE INDUSTRY COUNCIL MAY PROVIDE OPPORTUNITIES TO LEVERAGE ADDITIONAL FUNDS OR SHARE THE COSTS OF TRAINING PROGRAMS.

INVOLVEMENT OF THE STATE JOB TRAINING COORDINATING COUNCIL

THE STATE JOB TRAINING COORDINATING COUNCIL (SJTCC) IS THE APPROPRIATE BODY TO OVERSEE AND ADVISE THE GOVERNOR ON THESE DISLOCATED WORKER INITIATIVES. I AGREE THAT THE TRIPARTITE ADVISORY COMMITTEE ENVISIONED IN S. 538 CAN BE AND SHOULD BE A PORTION OF THE SJTCC.

THE SJTCC HAS BROAD VISION TO VIEW ALL THE STATE'S JOB TRAINING PROGRAMS. THIS BODY AVOIDS DUPLICATION, ADVOCATES FOR COOPERATION AND CAN FACILITATE THE LEVERAGING OF ADDITIONAL JOB TRAINING FUNDS AND OTHER STATE RESOURCES.

TESTIMONY: CHRIS PRYOR
MARCH 26, 1987

WORKER ADJUSTMENT COMMITTEE

WORKER ADJUSTMENT COMMITTEES HAVE BEEN AN INTREGRAL ASPECT OF OUR DISLOCATED WORKER OPERATION. WE HAVE FACILITATED SEVERAL LABOR MANAGEMENT COMMITTEES. WE HAVE A JOINT LABOR MANAGEMENT STEERING COMMITTEE FOR OUR CURRENT DISLOCATED WORKER PROGRAM. THIS IS A VALUABLE ACTIVITY. IT IS FEASIBLE TO DO IT WITHIN THE FRAMEWORK OF PRIVATE INDUSTRY COUNCIL MANAGEMENT OF THESE FUNDS.

SUMMARY

THE PRIVATE INDUSTRY COUNCILS IN THIS COUNTRY REPRESENT A VIABLE SERVICE DELIVERY MECHANISM FOR JOB TRAINING. OUR SCOPE IN LANE COUNTY, OREGON, IS BROADER THAN JUST THE NEEDS OF THE ECONOMICALLY DISADVANTAGED. PRIVATE INDUSTRY COUNCILS SHOULD BE CONSIDERED IN THE IMPLEMENTATION OF THE NEW DISLOCATED WORKER LEGISLATION.

RESPECTFULLY SUBMITTED,

CHRIS PRYOR, CHAIR
SOUTHERN WILLAMETTE PRIVATE INDUSTRY COUNCIL

Western Job Training Partnership Association

March 23, 1987

Mr. William A. Blakey
Chief Council
Senate Subcommittee on
Employment & Productivity
SD 428 Dirkson Bldg.
Washington, D.C. 20510

Dear Mr. Blakey:

At the suggestion of Les Francis, I am enclosing a copy of a statement of principals on Worker Readjustment Program Legislation, adopted last week by the Western Job Training Partnership Association.

Our Association, which is composed of local PICs and SDAs in California and other western states, is anxious to work with you and the members of the Subcommittee in shaping Federal Legislation on worker readjustment and other Federal Legislation of importance to local PICs and SDAs.

We would appreciate your including our statement of principals on worker readjustment as testimony in the record of the Hearings on this subject, which are to be held by the Subcommittee on April 6th.

Thanks for your help. I look forward to working with you in the future.

Best regards,

Jim King

James R. King

JRK/ajs

cc: Senator Cranston
Senator Wilson
Martin Jensen, NJTP, Inc.
WJTPA Board of Directors
Les Francis

Enclosure

WJTPA • 1024 F Street • Sacramento, California 95814 • 916/441-5603
SDA Membership From: Arizona, California, Hawaii, Nevada

Western Job Training Partnership Association

STATEMENT OF PRINCIPLES ON WORKER READJUSTMENT PROGRAM LEGISLATION

PROGRAM PURPOSE:

In view of the emergence of a truly inter-dependent world economy and of the rapid advance in technology, the restructuring of America's industry is an ongoing phenomenon whose byproduct is worker dislocation and job obsolescence that affect the job security and income of American industrial workers and their families. A unified, federally funded, locally administered Worker Readjustment Program should be created to provide a dual system of reemployment assistance and training that takes into account the career/life readjustment that the family, as well as the dislocated worker, must face.

The focus of the federal program should be to provide local PICs/SDAs with the resources and capacity to respond rapidly to three distinct situations: large plant closures/layoffs, hopefully with advanced notice and pre-layoff assistance at the plant site; other plant closures/layoffs at centralized community service centers, and retraining/services to long-term unemployed individuals whose skills are obsolete to the local labor market.

PROGRAM PARAMETERS:

o Build program upon existing JTPA delivery system.

o Emphasize a partnership between business, labor and government.

o Create a state level early warning system to report significant company and occupational layoffs.

o Create the legal framework and incentives for advanced notice of significant structural layoff or plant closure.

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SDA Membership From: Arizona, California, Hawaii, Nevada

- Emphasize rapid reemployment as program's primary goal, whereby making retraining a secondary consideration.
- Develop local SDA "fire house" capacity to provide rapid crisis intervention services and immediate crisis intervention funding.
- Build a state and local level capacity to respond to plant closures/mass layoffs by providing reemployment assistance and retraining services.
- Provide targeted funding for job creation programs that could include small business development, attraction and expansion.

DELIVERY SYSTEM:

- Develop rapid response funding capability to meet state-wide and local worker dislocations.
- Develop the ongoing capacity of local PICs/SDAs to respond to plant closings/mass layoffs, which includes ongoing funding and technical assistance as needed.
- Establish strong state interagency task force or worker readjustment unit, headed by a Governor-appointed interagency coordinator, to support locally designed interventions.
- Give local SDAs the flexibility to develop local program designs and strategies to meet local needs.
- Seek the advice of labor and management in the design of the local program, wherever possible.
- Encourage the networking of community resources--state and local agencies, business, labor, and nonprofit groups.

DISLOCATED WORKER SERVICES:

- Encourage pre-plant closures/layoff interventions by providing dislocated worker services prior to layoff, Preferably at the plant location.
- Address the readjustment needs of the entire displaced worker family, including family stress counseling and spousal reemployment services.

- Emphasize aggressive ongoing job development and placement services.
- Recognize that in making a career change the dislocated worker may need to change jobs more than once and should be entitled to continued program assistance.
- Use needs/based payments and relocation assistance only as a last resort.
- Provide the legal framework to allow loan refinancing and debt assistance to protect the dislocated workers' home, automobile and credit rating.
- Mandate the extension of medical benefits for at least six months after layoff.

RETRAINING:

- Focus retraining resources on full-time employment with sustaining income and career growth.
- Emphasize a partnership between government/education and business to retrain workers for economically viable jobs, including job retraining for those in danger of career obsolescence, and for retraining displaced workers for career change when required.
- Develop an ongoing capacity for retraining using the facilities of local educational agencies in partnership with local business.
- Fund basic education only as a means for getting into a specific job or retraining program and encourage the involvement of local educational resources for ongoing educational needs of displaced workers.
- Recognize that illiteracy is a predominant and sensitive problem that takes one-on-one assistance with displaced workers.
- Allow for the provision and extension of UI benefits for displaced workers while undertaking classroom training.
- Set no limitation on when a UI recipient may apply for UI training benefit extensions.

PROGRAM FUNDING:

- Place the major portion of displaced worker funding at the local and state levels, retaining a small portion at the national level for R & D programs, technical assistance, and emergency discretionary funding.
- Fund the dislocated worker adjustment program on the JTPA funding cycle, i.e. July-June program year.
- Provide for JTPA Title III transition funding with the ability to commit funds through June 30, 1988.
- Provide for continued services to victims of plant closures/mass layoffs for at least one year, even though a program may straddle two JTPA program years.
- Provide national funding for research on job obsolescence and for updating the Dictionary of Occupational Titles, perhaps on a computerized system.
- Allow funds to be used for promoting small business incubation, business acquisition/expansion and job creation, where needed.
- Provide formula allocation of federal funds on a 20/80% federal to state split and likewise a mandated 80% pass through of the state allocation to local SDAs.
- Assure program funding stability, while recognizing the need for reallocation of unspent monies, by providing semi-annual reallocations of funds.

HFPIC Hoosier Falls
Private Industry Council, Inc.
Box 1567 Jeffersonville, IN 47130-1567
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Leo B. Toupin
Chairman

Tom Lumley
Treasurer

In Partnership with
Local Elected Officials
Dale Orem
L.E.O. Spokesman

March 20, 1987

The Honorable Paul Simon
United States Senate
Committee on Labor and
Human Resources
Washington, D.C. 20510-6300

Dear Senator Simon:

I am writing to inform you that I will not be able to provide oral testimony at your hearing on 3/26/87 regarding the Economic Dislocation and Worker Adjustment Assistance Act and the Worker, Readjustment Assistance Act. We have a Private Industry Council meeting that morning and an Indiana PIC Chairs Association meeting that afternoon, both of which I feel I need to attend due to the topics to be covered.

I do, however, have some comments regarding the bills, and you will find them attached. I hope that you find them to be helpful in your deliberations.

If you or your staff have any questions regarding this matter, or if I can be of assistance in the future, please do not hesitate to contact me.

Sincerely,

Leo B. Toupin
Chairman

cc: File

Written Testimony on Proposed Legislation:
Subtitle C, Worker Readjustment Act (WRAP)
And S.538 presented to
Committee on Labor and Human Resources
Senator Paul Simon, Chairman
by
Leo R. Toupin, Chairman
Hoosier Falls Private Industry Council
Jeffersonville, IN 47130

Generally, I note that both bills attempt to address perceived shortcomings in the current Job Training Partnership Act legislation directed toward Dislocated or laid off workers. Specifically, S.538 addressed concerns that arise more from the variety of ways that JTPA Title III allocations and programs are provided in the various states. The JTPA amendments and S.538 expand on the definition of a dislocated worker to include farmers, the self-employed and homemakers which I support.

The concepts of advance notification and rapid response with local involvement of worker adjustment committees and the involvement of the local employment and training professionals provided by the local private industry councils are to be encouraged. Required consultation before layoff is also worthy. However, as a private sector employer, who recently experienced a plant closure, I question the feasibility of the required notification periods and the reality of the employees being prevented from disclosing the intended layoffs. The administrative enforcement proposed is contrary to the concept of free enterprise in a free market. I believe too many employers may delay notice of layoff because of unforseen circumstances. Therefore, I suggest an approach to bring about these timely activities by providing incentives as proposed in the Worker Readjustment Act (WRAP). As an employer approaches a time of closure or layoff, timely notification will occur where incentives exist and intervention services are available, rather than punishment in the courts for companies or individual business men who will shortly disappear from the market place.

I note in S.538 that state residency is not a requirement for a dislocated worker to be served. Self employment demonstration program and loan demonstration projects are recognized. All services now recognized and provided under Title III of JTPA are also cited in the bill. I see these as positive features of the bill. However, I am concerned regarding the establishing of the Tri-partite committee on the state level. I personally believe that this should be a function of the existing State Job Training Coordinating Council as suggested as a possible choice in the bill.

I am also concerned that section 331 creates the potential for public works employment in 5 to 10 communities around the nation. Private sector PIC members are always wary of public works projects, and believe that such spending could be better directed toward dislocated worker projects developed by local PICs based upon local needs for regular participant services.

A review of the Worker Readjustment Act Title I-C recognizes more features of the existing Job Training Partnership Act. This bill proposes the delivery system and services to be provided through the currently existing system under JTPA. The concept of Voluntary Advance Notice, Intervention Assistance and rapid response are a part of this bill with incentives to the business person for initiating the proper acts toward a closure or layoff. I believe this is a more creative approach to a real traumatic event in business.

PIC oversight and review of the proposed programs of services of this act is a positive feature of this bill. The role of the Job Training Coordinating Council is also positive. I note that this bill denies public service employment or work experience which have historically been for purposes other than training of dislocated workers. I can support this concept.

Recognition of PIC oversight of providers of employment services, the linkage of this bill to Wagner/Peyser, JTPA, and credit to U.I. tax for employers are all positive features of this bill.

I believe the vouchering system for training can be better addressed through supportive services or tuition support at the local level by the PICs responsible for the whole range of services proposed in this bill.

Generally, I understand and support the major concepts and intent of both of these bills. I suggest that the committee review the existing JTPA-Title III. You will note that Title III only contains 8 (eight) sections, and could easily be expanded to include all of the positive features in both of these proposed bills. Our local PIC has been allocated dislocated worker funds. We currently have a rapid response procedure and a number of services such as literacy, vocational training, retraining, on-the-job-training, job search and supportive services. I believe the current JTPA system as it exists can provide the vehicle to deliver the positive features of the two proposed bills.

The committee should consider the expansion, by amendment, of the current Title III of the Job Training Partnership Act, rather than create a new and separate system. The creation of a new system with new administrative units from Department of Labor down to "local units of Government" would be costly in both time and money. It should be noted that surveys have indicated that local PICs charged with delivering dislocated worker services have had the best record in comparison to state or federal dislocated worker projects. Indiana has established a comprehensive employment and training system, and I believe that the intent and content of these two proposed bills could be best met through amending JTPA (PL97-300) and using the present system.

Respectfully submitted,

Leo R. Toupin
Hoosier Falls PIC
March 26, 1987

STATEMENT OF LEE OTTENBERG
ON BEHALF OF
THE INDEPENDENT BAKERS ASSOCIATION
BEFORE THE
SENATE SUBCOMMITTEE ON LABOR, EMPLOYMENT AND PRODUCTIVITY
HOLDING HEARINGS ON
THE ECONOMIC DISLOCATION AND
WORKER ADJUSTMENT ASSISTANCE ACT OF 1987
(Plant Closing Legislation)
March 26, 1987

Mr. Chairman:

My name is Lee Ottenberg and I am appearing today as Chairman of the Legal Affairs Committee of the Independent Bakers Association, a Washington based trade association representing small and medium sized wholesale bakeries most of which are family owned. IBA's membership also includes members of the allied trades. Our membership produces approximately 50% of the nation's wholesale baked goods. I also serve as Vice President of Ottenberg's Bakery in Washington.

Mr. Chairman, the "Economic Dislocation and Worker Adjustment Assistance Act of 1987",(S.538), certainly addresses issues of concern to members of the baking industry. We enthusiastically endorse Titles I and III as necessary programs in the assistance of dislocated workers.

Specifically, Title I would appropriate $980 million from general revenues to assist dislocated workers. This assistance would include the establishment of a Dislocated Worker Unit (DWU) at the US Department of Labor to distribute 70 percent of the funding to individual states. The DWU would hold 30 percent of the funding in reserve for demonstration projects for retraining, job search assistance, relocation assistance, vocational education and on-the-job training, basic education and literacy training and income support for those enrolled in training programs. Because Title I aids unemployed workers at so many different levels, the IBA heartily endorses it as a much needed tool to aid the unemployed in the transition to new jobs.

Title III would establish special demonstration projects to test new approaches to retraining and job creation. These demonstration projects include a federal loan program for the training of dislocated workers and a public works employment demonstration program. The intent of Title III, the assistance of the unemployed in gaining job skills, is endorsed by the IBA.

Title II of S.538 would require businesses with 50 or more employees to give advance notice of "plant closings and mass layoffs" to employees or their representatives. The notices are graduated, based on the number of employees to be displaced: 90 days notice for layoffs of 50-100 employees; 120 days notice for layoffs of 101-499 employees; and 180 days notice for layoffs of 500 or more employees. Title II would also require employers to consult and negotiate with union representatives, or at nonunion work sites, with representatives selected by the employees. These sessions would be for the sole purpose of examining alternatives to the planned layoffs. Because Title II of the Act negatively impacts the small and medium sized bakers who comprise the majority of our membership, the Independent Bakers Association opposes it for the following reasons:

1. Mandatory announcement of layoffs and plant closings will result in loss of reputation and product loyalty. In the baking industry orders and credit are intrinsically related to a baker's good name and continuity. The loss of reputation and brand availibility will undermine credibility and ultimately result in further loss of revenues in an already depressed situation.

2. Loss of revenue during the notice period may force the early dismissal of a substantially larger number of employees than initially anticipated. In addition, any possibility of recovery which could put employees back to work is seriously impaired or totally destroyed.

3. The baking industry is cyclical in nature; therefore, mandating specific time frames is unrealistic in our industry. Layoffs are often necessary during low periods, but are offset by periods of peak production. Low periods will be prolonged during mandated notice periods, which, in turn, will effect prospects for reemployment and inhibit the baker's ability to recover. Free of government interference, the baking industry balances its highs and lows.

4. The bill does not distinguish between different types of industry. Bakery products are extremely perishable; therefore, bakers do not have inventories to maintain business during a notice period, whereas other types of business may be able to

continue. Without new orders for fresh products workers will be dismissed earlier than planned.

5. Flexibility is especially critical to the small and medium sized companies that are the major job generators of our economy. These companies including wholesale bakers tend to operate in high risk low margin business environments. Flexibility is essential to their success; the costs of failure have to be kept low or the incentives to start up will be lost and the new jobs forfeited.

6. Advances in technology, intended to lower the cost of baked goods, often displace workers. Title II of the act, which is intended to assist displaced workers, in effect penalizes employers for implementing new technology.

7. The Independent Bakers Association is fundamentally opposed to government interference in the private business sector. We believe that interference will especially upset the delicate balance of labor-management relations. Businessmen must be free of government constraints and interferences in order to make sound business decisions.

8. Consultation is also a troubling concept in practice. Companies don't treat lightly the decision to close a plant. When they do make this decision, it is generally after all other possibilities have been explored.

In conclusion, Mr. Chairman, the Independent Bakers Association believes that voluntary advance notice of plant closings and layoffs is good business practice and should be encouraged and facilitated whenever possible. In addition, due to the cyclical nature of the baking industry and the myriad of unforseen circumstances surrounding plant closings and layoffs, mandatory notice is not only an ineffectual means of aiding the employee, but in fact serves to diminish the flexibility that is vital to compete successfully in the wholesale baking industry.

Therefore, The Independent Bakers Association urges passage of S.538, minus Title II. Congress once had a gentleman's agreement with business not to mandate employment benefits. These were to be left to collective bargaining - the market place.

IBA hopes that Congress will reinstitute this practice!

Mr. Chairman, thank you for this opportunity to present our views.

Contact: Robert N. Pyle, President
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Suite 1004
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202/223-2325

TESTIMONY
OF THE
NATIONAL ALLIANCE OF BUSINESS
JOINTLY BEFORE THE

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY
AND
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

ON ECONOMIC ADJUSTMENT ASSISTANCE FOR DISLOCATED WORKERS

MARCH 26, 1987

Mr. Chairman, I appreciate the opportunity to submit testimony for review by the Committee on the critical issue of economic adjustment assistance for dislocated workers. (Submitted by John L. Clendenin, Chairman and Chief Executive Officer of BellSouth Corporation, and Chairman of the National Alliance of Business).

NAB's commitment to the goal of assisting workers who lose their jobs permanently because of structural economic adjustments is manifest in the variety of activities it has sponsored in this field including: direct technical assistance through the NAB Business Consulting Service to companies, unions, states, and localities with developing dislocated worker programs at over 25 sites; two national conferences on worker dislocation; and technical assistance guides for employers and States on worker readjustment. We have also maintained ongoing communication and cooperative efforts with the Human Resources Development Institute (HRDI) of the AFL-CIO on worker dislocation issues.

The Alliance has gained valuable experience to help guide federal, state, and local policy. We also feel that, because of our in-depth experience in working directly with companies on this issue, we are able to represent the thinking of leaders in the business community on the role of federal dislocated worker training programs in helping workers as well as companies adjust to economic dislocation.

The Board of Directors for the Alliance is vitally interested in this issue and has spent time on numerous occasions over the past year in its meetings to discuss it.

Basic Policy Framework. Compelling reasons for new federal legislation can be demonstrated alone by data on unabated worker dislocations affecting millions of individuals annually; these are projected to continue into the next decade through rapid economic shifts.

Addressing the needs of workers who lose their jobs permanently because of structural economic adjustments is a long-term problem that will require development of long-term strategies. Responding to this challenge will require leadership at all levels of government to develop, to restructure, and to evolve the capacity of existing public institutions capable of meeting labor market needs, primarily at the state and local level, with active participation by business.

There is a significant role for private sector employers in this effort, particularly at the local level. Their involvement is not just at the point of crisis, at the job site, with major layoffs or plant closings, but in facilitating in the broader design and implementation of economic adjustment strategies and institutional responsiveness in the local labor market.

Embarking on a long-term strategy to enhance the capacity of public institutions to deal with economic adjustment well into the future is fundamental to maintaining the Nation's competitive posture in the world economy.

DISLOCATED WORKER ADJUSTMENT SERVICES

The most important contribution of the legislative proposals on dislocated workers is to establish a comprehensive approach to training and readjustment services. Our comments today will focus on this critical addition to federal policy. The design of worker readjustment services in both bills, S. 538 (title I), introduced by Senator Metzenbaum and others, and S. 539 (title I, Subtitle C), introduced by Senator Dole for the Administration, builds on the most successful elements of federal assistance under title III of the Job Training Partnership Act. Both proposals build on the ingredients necessary for a sound program, which means that:

- Public/private partnerships are the underlying basis for all programs;
- Assistance is available to all dislocated workers without making artificial distinctions according to cause of dislocation (i.e. trade-affected);
- States are given the administrative flexibility and the program resources to respond rapidly to worker dislocations; and
- Program designs are flexible enough to meet local needs of companies, workers, and the community.

Other existing federal programs with resources to serve dislocated workers fall short of these goals.

Importance of an effective service delivery system overall. Since labor market conditions vary greatly among states, much of the flexibility granted to the states under existing law allowing them to try new approaches as well as to use approaches that have proven to be effective should be preserved. The states' broad authority over who is served, how the program is administered, how resources are distributed, and what services are provided should continue.

After detailed analysis of each bill (S. 538 and S. 539), our conclusion is that a stronger and more effective delivery system would be established under the administrative structures provided in S. 539, as proposed by the Department of Labor.

States are given responsibility for establishing systems and programs, including a rapid response capability. States are to establish linkages with other employment and training related programs, especially with those already proven effective in serving dislocated workers, and to involve business through the councils established under the Job Training Partnership Act (JTPA).

The Administration's bill recognizes the need for a local role in the delivery system. All service delivery areas under the Job Training Partnership Act are designated either as substate areas or as parts of larger substate areas to delivery services under this program. The substate grantee is designated for each substate area in accordance with an agreement between the Governor, and local elected official, and the JTPA private industry council.

The bill specifies that entities eligible for designation as substate grantees include: private industry councils in the substate areas; service delivery area grant recipients or administrative entities under JTPA; private nonprofit organizations; units of general local government; local offices of state agencies; and other public agencies such as community colleges.

The Administration's approach under S. 539 gives the Governor the authority and flexibility to choose the most effective service deliverer based on that state's unique strengths, institutional resources, and political circumstances. The Administration's bill is more specific than S. 538 in establishing an important role for a local service delivery system.

Although the Administration's bill gives broad discretion to governors in the design of program systems, it also gives appropriate weight to a government policy that aspires to involve business and community interests through existing job training institutions like the local private industry councils. It seems to us that the use of these councils, whenever possible, is an important part of this program structure. At the same time, the bill allows the Governor to evaluate local institutions and resources to assure effective service delivery throughout the state and may shoose a different approach.

Since plant-specific centers are not always feasible or practical, a locally based service delivery system is necessary. This new system should also serve dislocated workers who are unemployed as a result of "ripple effects" in the local economy, or who initially choose not to participate in plant centers but later feel the need for labor market services, or who have otherwise lost their jobs with no reasonable expectation of finding work in that occupation, industry, or geographic area. Every state should maintain local capacity to meet this need.

State and local roles. There is an important point to be made about granting authority to states for this comprehensive program. In expanding dislocated worker activities there should be a conscious, immediate effort to undertake system reforms and view the provision of services comprehensively, either by rationalizing existing structures and institutions or building new more integrated structures for delivering services. It is important not to set up separate categorical delivery structures.

It is vital that governors not view this economic adjustment program as a new categorical federal program outside of their control and, therefore, fail to consider how it fits into evolving state human resource development and economic development systems. The administration's bill assists the governors in this task by providing specific roles for existing state job training coordinating councils and local private industry councils in the areas of policy and institutional coordination, program design, and oversight.

The State Job Training Coordinating Councils established by JTPA would be changed and provided with broader advisory authority over the state's labor market policies. It would continue to be responsible for promoting coordination of employment and training related programs including those providing economic development, education, training, and social services. It would also advise the governor on the structure and policies for establishing this expanded dislocated worker program.

It would work with employers and community representatives to implement the governor's system of incentives that would encourage early notification of dislocation events. It would participate in the design and implementation of the early readjustment assistance systems for the affected local areas by providing support for rapid response teams and assisting in the establishment of voluntary labor-management committees, where appropriate.

The state council would be chaired by a private sector member, the membership would be comprised of not less than half the members representing the private sector, including individuals serving on local private industry councils and on job service employer committees, and would retitle the state body as the State Training and Employment Council.

We believe that these are positive steps in building public/private cooperation.

Improving state capacity for program administration. Experience has demonstrated that the states need greater staff capacity and institutional development resources just to make current programs more efficient. This major new initiative should be used as a tool to give states the resources to seriously undertake system reform and comprehensive policy development. It is critical that the governors, above all, be able to actively develop the capacity to deal with broader issues of economic adjustment that require integration of training and employment services with economic development, better information on labor market trends, and education institutions.

S. 539 provides for building this capacity although we would like to reinforce the critical need for active federal technical assistance and training to the states to ensure that the capacity exists throughout the country.

Plant-specific adjustment capacity. Both bills provide authority for states to establish plant-specific adjustment service centers for affected workers, where appropriate. Experience suggests that the most effective response to plant closings or mass layoffs is the creation of a plant-specific adjustment center. Program participation is generally higher, placement rates are higher, and there is greater flexibility in program design, particularly when the center is established before the plant closes or workers are dispersed into their communities. States should maintain the capacity to assist employers and workers to set up plant-specific adjustment centers, and should promote their use as the preferred mechanism for responding to large scale dislocations.

The state capacity to provide rapid response teams (modeled after the Canadian Industrial Adjustment Service) would fall in this category in states that choose to offer this service. The establishment of teams should not be mandated for every state, but the capacity for rapid response should be.

In specifying the service delivery activities that should occur in plant-specific programs, both bills go too far in requiring a conventional labor-management committee model as the primary body responsible for program design. This model might be the preferred approach, which state assistance teams could recommend or that companies and unions could choose , but the variety of employer/employee relationships in the American economy have demonstrated other creative methods for cooperation between workers and management. This program design should not be mandated in a way that precludes other appropriate planning structures or that limits the options available at a plant site for designing an effective approach to assist workers.

Other types of services the Committee might consider in the program. Both bills provide authority to states to use funds in a variety of programs and services which have been proven effective from past program experience, including those currently available under JTPA title III. The following suggestions could be added perhaps as experimental authorities in those states choosing to use them to meet specific needs in their areas.

We offer them only as suggestions for your consideration and do not necessarily consider them critical to an effective bill.

- *Contingency "loan" funds in the state.* In the past when a plant closing or layoff has been announced, a common occurrence is that the employer, union, and government agree to work and plan together, but cannot get a service center going and get workers enrolled early because of lack of immediately available funds. The delays for drafting proposals and plans just to get needed grant funds can stifle program activity for months (as experience has shown under title III of JTPA).

  This new authority would allow states to commit some administrative or planning funds instantly (within 24 hours) at the site to help with early staffing, planning, outreach, and program development. It would be an important new mechanism for responding quickly. Funds would, in effect, be "borrowed" from an amount eventually allocated under an approved plan. These are fairly inexpensive, but critical, services and could be limited to a certain amount.

- *Prevention activities.* Because dislocation may be avoided if states are able to identify possible trouble spots in advance and help companies overcome certain problems, this new authority could allow states to provide certain anticipation/prevention/business retention services: voluntary early warning system, information gathering, research, and *feasibility studies* in cases where a worker buy-out or other alternative seems possible. A variety of prevention activities could be allowed that would help states identify problems, deal with them before jobs are lost, and negotiate business retention. The authority to use funds for these services should not be tied to any mandatory notification requirements under title II of S. 538, but would provide states with some resources to identify possible problems before they happen and to offer employers help should they find it beneficial.

- *Unemployment insurance recipient incentives*. Funds could be used to finance cash incentives added to unemployment insurance benefits based on program participation. It would allow a 10% cash bonus on UI payments for eligible workers who enroll for services in the program, particularly at plant or site-specific centers, and would be available while the worker is actively involved in the program. (This seems a logical mechanism for incentives to overcome personal shock, paralysis, or unfounded hope of returning to the job.) It is expected that early intervention assistance would reduce the duration of unemployment insurance benefits and thus realize potential savings.

- *Early job placement bonus*. States should also be allowed to provide bonuses to workers who secure jobs before their unemployment insurance eligibility has run out. Such bonuses might include a one-time, lump sum cash bonus -- not to exceed a certain amount -- to eligible individuals who find employment prior to the expiration of unemployment benefits. Another possibility is to offer a bonus to recipients who accept jobs that pay significantly less than their previous employment.

MANDATORY PRE-NOTIFICATION ISSUES

We unequivocally oppose any legislation that would establish mandatory pre-notification of plant closings or mass layoffs with criminal or civil penalties in federal law. The arguments against these proposed requirements in S. 538 have already been articulated before this Committee by the National Association of Manufacturers and the Chamber of Commerce of the United States.

In our view, the need for this legislation to assist the affected workers is so compelling that it obliges Congress not to risk losing effective assistance for worker retraining by tying it to proposals for mandatory notice.

It should also be noted that quick mobilization to help workers contributes as much to success as does the length of notice. While much attention has been focused on the issue of advance notification of plant closings, NAB's experience suggests that the actual amount of notice is less important (in terms of effective reemployment assistance) than how effectively that up-front time is used by the company, workers and public agencies. Successful programs have been put together in a few weeks when everyone worked cooperatively and responsively. On the other hand, agencies have lagged their response for more than a year in some cases when six months or more of notice was given. A quick, effective response to mobilize resources and provide technical assistance, once notice is given, is just as important to program success as the notification.

The primary objective of this legislation should be to help workers move to other jobs or new productive careers and not to constrain a company from closing a plant and restructuring its workforce. The fundamental importance of new legislation, even when a plant has to close rapidly, must be to help the people affected.

Business should notify its workers as early as possible and help them adjust. Most businesses already do provide notice in a manner that creates a more positive, constructive environment that would not be possible under mandatory notification and other prescriptive procedures.

The polarizing effect of combining comprehensive worker adjustment services with mandatory requirements for pre-notification of plant closing or permanent layoff should be avoided.

We feel strongly that voluntary notification is a critical element in the federal policy approach. We believe that the proposed mandatory notification requirements, should be reexamined in light of information available to the Committee about the European experience where there are such requirements, the current status or our ability to adjust in the world market in the struggle to remain competitive, and the current experience among the states with incentives for voluntary notice.

Mr. Chairman, after months of discussion, the National Alliance of Business continues to maintain its commitment to assisting workers dislocated from jobs no matter what the cause. We believe that the program of readjustment services being proposed in these bills, particularly under the provisions of S. 539, represents a critically needed addition to current policy.

We wholeheartedly support that effort, and enthusiastically offer our support and expertise to you and the Committee in making it a reality for American workers. I have attached to our statement a summary of policy principles that our Board of Directors has endorsed unanimously. We offer these principles as a guide against which to measure any new legislation.

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SUMMARY OF KEY PRINCIPLES FOR DISLOCATED WORKER INITIATIVES

Experience from public policy over the past decade has provided valuable lessons to draw from for new initiatives. The strengths and weaknesses of public institutions have already been tested in many different ways. Any legislative proposal being considered at the federal level should be measured against key principles drawn from those lessons.

(1) The concept of a private/public partnership should underlie all policy efforts for labor market adjustment assistance to dislocated workers. Policies must encourage the coordination of resources at the federal, state, and local level among business, government, labor, education, and community organizations. No single sector of the economy is equipped to deal with this complex problem alone. It is essential that limited resources, and a variety of expertise be focused and coordinated to combat the problem.

(2) Policies should fit into a coherent framework of delivery mechanisms and services and build on improvements to existing approaches that have worked. Elements that work in current programs and systems should be maintained and built upon, but adjusted to assure the necessary coordination. New programs and policies should be consistent with one another. Competing or duplicative delivery systems, or separate categorical programs that take no account of what exists, should not be established.

(3) Programs should be available to workers dislocated by all structural economic shifts and not artificially distinguished to isolate trade-affected workers. Public policy should not make an artificial distinction in services and eligibility between workers dislocated by foreign trade competition compared to workers dislocated by other structural economic conditions.

(4) Early intervention by business, labor and government should be a priority in services to workers identified as needing labor market adjustment assistance. The actual amount of notice may be less important (in terms of effective reemployment assistance) than how effectively that up-front time is used by the company, union, government, and community institutions. *A quick, effective agency response to mobilize resources and provide technical assistance, once notice is given, is just as important to program success as the notification.*

(5) To the extent possible, policies should include incentives for both employer participation and worker initiative. It is important for employers to participate in helping workers. It is also important for workers to seek retraining and reemployment early to minimize family problems and to avoid exhausting UI.

(6) Income assistance during training and job search should be part of labor market adjustment policy. The typical dislocated worker, with family and financial responsibilities, will not have the ability, or incentive, to invest in needed training without some form of income support. The Unemployment Insurance system presents the logical starting point for income assistance.

(7) Flexibility should be assured that allows the state and local levels to design the appropriate mix of services and opportunities that best meet the particular needs of each labor market economy.

(8) Funding levels should be stable and supported through general revenues.

(9) Individual workers must have flexibility to choose services and training that reflect occupational interests.

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ADVANCE NOTICE: AN EMERGING CONSENSUS

Research Report
Industrial Union Department, AFL-CIO

January 1987

ADVANCE NOTICE

Introduction

There is an emerging consensus regarding advance notice. A variety of reports and studies released over the last year indicate that advance notice of an impending layoff is critical to the development of successful adjustment programs, that advance notice requirements work well in other countries, and that providing advance notice is not burdensome to business and may generally be an advantage; yet, the bulk of dislocated workers do not receive adequate notice. The natural conclusion from the studies is that an essential part of a national adjustment program is legislated requirements to provide advance notice of plant closings and mass layoffs to workers and the community.

Advance Notice and Adjustment

The goal of any adjustment policy must be to facilitate the rapid reemployment of dislocated workers in appropriate jobs. Successful adjustment means that there is limited or no unemployment experienced between jobs and that new jobs fully utilize dislocated workers' skills and allow them to maintain, as best as possible, their prior standard of living. A successful adjustment process also involves limiting a worker's income loss during the transition.

A broad range of services must be available to dislocated workers so that they can develop a tailored adjustment program to fit their needs. Many workers need job search skill training. Others require remedial education, classroom vocational education or on-the-job training programs. A job development effort to place workers in available jobs is present in almost all adjustment programs.

The necessary ingredient in all of these efforts is time for planning, for implementation and for recruiting. This requires advance notice. As the Office of Technology Assessment (OTA) report says:

> The best time to start a project for displaced workers is before a plant closes or mass layoffs begin; advance notice makes early action possible—although it does not guarantee it. Some of the advantages of early warning are: 1) it is easier to enroll workers in adjustment programs before they are laid off; 2) it is easier to enlist managers and workers as active participants in displaced worker projects before the closing or layoff; 3) with time to plan ahead, services to workers can be ready at the time of layoff, or before; and 4) with enough lead time, it is sometimes possible to avoid layoffs altogether. (OTA, p. 13)

The report of the Secretary of Labor's Task Force on Economic Adjustment and Dislocation stresses that "advance notification is an essential component of a successful adjustment program."

Recent reports by business organizations such as the Conference Board and the Committee for Economic Development also point out the importance of advance notice:

> *Companies should provide as much notice as possible of decisions affecting jobs, particularly in cases of plant closings, work transfers, or automation.* Advance notice allows employees the time to adjust, and management the time to plan and implement business moves in a way that minimizes hardship. Companies should also take steps to notify the local community and state agencies of pending plant closings in order to allow time for a coordinated response. (CED, pp. 44-55, emphasis in original)

> Both survey and interview participants note that advance notice is beneficial to employees and is an essential element in a plant closure program. . . . Notice is also critical because a functioning plant is, perhaps, the program's single most important resource. (Conference Board, p. 7)

Advance notice of an impending layoff is beneficial for other reasons. Notice provides time to explore alternatives to layoffs or to attract new owners or create a worker buyout. Providing advance notice is also just plain human decency, so that such a life-altering event can be assimilated into a worker's financial and personal plans. And, as the OTA reports,

> Many company managers see advance notice as a benefit to the company itself, by improving relations with the remaining workers, enhancing the company's reputation in the community, and conforming with company values of fair and ethical treatment of its employees. (OTA, p. 13)

Business Practices Regarding Advance Notice

Despite apparent universal agreement that advance notice is critical to the adjustment process, U.S. businesses do not provide adequate advance notice in a majority of mass layoffs or plant closings. In contrast to a few years ago, when there was only limited statistical evidence regarding the provision of notice, there has been a major accumulation of evidence throughout 1986.

The most in-depth study of notice is that of the General Accounting Office (GAO). The GAO conducted a survey of large establishments (100 or more employees) which experienced a mass layoff or plant closure in 1983 and 1984. The basic results of GAO's studies are contained in tables 1 and 2.

GAO distinguishes between two types of notice — general and specific. General notice provides a general announcement intended to provide warning to workers and the community without specifying the exact closure date or which workers are to be laid off. Specific notice informs individual workers when their jobs will end. General notice provides an indication of the need to set up a program but specific notice is needed for workers to engage in adjustment oriented activities and for an unequivocal statement that dislocation will occur.

Measured against OTA's conclusion (p. 1) that it "takes about two to four months work in advance to prepare a comprehensive adjustment program," it is clear that the provision of notice by firms with large plants is wholly inadequate. Note in table 1 that blue collar workers, who make up the bulk of dislocated workers, received a general notice of three months or more in only 17 percent of the mass layoffs or plant closings in 1983 and 1984. They received more than three months specific notice in less than 5 percent of the cases. Most notice was provided within two weeks of layoff. Blue collar workers received less than 14 days individual notice of their impending jobs loss in two-thirds of mass layoffs or plant closings. This is hardly enough time to prepare for a shift to a new occupation or industry.

TABLE 1

GAO ANALYSIS OF LENGTH OF NOTICE BY SIZE OF THE ESTABLISHMENT FOR BLUE COLLAR WORKERS

General Notice

Length of notice (days)	Number of Employees 100-499 a	 500 b or more	TOTAL
		(percent)	
0-14 days	50.5	50.4	50.5
15-30 days	14.9	21.8	15.7
31-90 days	18.5	7.4	17.2
91 or more	16.1	20.4	16.5

Specific Notice

Length of notice (days)	Number of Employees 100-499 a	 500 b or more	TOTAL
		(percent)	
0-14 days	66.0	75.9	67.1
15-30 days	15.0	11.9	14.6
31-90 days	14.7	5.8	13.6
91 or more	4.4	6.4	4.6

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[a] About 88 percent of the establishments in our analysis had 100 to 499 employees.

[b] About 12 percent of the establishments in our analysis had 500 or more employees.

TABLE 2

GAO ANALYSIS OF LENGTH OF NOTICE BY SIZE OF THE ESTABLISHMENT FOR WHITE COLLAR WORKERS

General Notice

Length of notice (days)	Number of Employees 100-499 a	500 b or more	TOTAL
	(percent)		
0-14 days	43.8	44.8	43.9
15-30 days	18.6	15.3	18.2
31-90 days	19.2	16.8	18.9
91 or more	18.2	23.0	18.9

Specific Notice

Length of notice (days)	Number of Employees 100-499 a	500 b	TOTAL
	(percent)		
0-14 days	59.9	51.6	58.9
15-30 days	17.9	22.9	18.5
31-90 days	16.2	18.0	16.4
91 or more	6.1	7.5	6.2

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a About 88 percent of the establishments in our analysis had 100 to 499 employees.

b About 12 percent of the establishments in our analysis had 500 or more employees.

The GAO survey found that white collar workers get an average of two weeks specific notice and blue collar workers seven days. Blue collar workers in unionized establishments get two weeks notice on average, compared to two days average notice in nonunion establishments. As the tables show, employers with larger plants did not provide any more notice than employers with relatively smaller plants.

As OTA (p. 1) notes regarding the GAO survey, "In general, the amount of notice individuals receive is short." The recent Department of Labor Task Force agrees, saying that (p. 23):

> It is also true that a recent General Accounting Office survey indicates that in too many plant closings and permanent mass layoffs, insufficient advance notice of job loss is given to make possible an optimal private and public role in the reemployment process.

Some information on notice is available from the Displaced Worker Surveys conducted by the Bureau of Labor Statistics (BLS) in January 1984 and January 1986.

The BLS survey defines dislocated workers as those workers over 20 years old who "lost or left a job because of a plant closing, an employer going out of business, a layoff, from which (they) were not recalled, or other similar reason."

The first survey shows that 11.5 million workers were displaced in the years 1979 through 1983. A 1986 Department of Labor study (see Podgursky and Swaim) focused on the 9.5 million full-time workers who were displaced (5.8 million blue collar and 3.8 million white collar and service workers). In the BLS surveys, each respondent was asked, "Did (you) expect or had (you) received advance notice of a layoff or a plant or business closing?" The percentage of workers having either an expectation or formal notice of job loss is as follows:

Blue Collar		White Collar and Service	
Male	Female	Male	Female
53.9%	55.9%	50.0%	52.4%

Thus, only half of the displaced workers had any suspicion that they were about to lose their jobs. The number that received formal advance notice is not known but clearly must be less than half. Unfortunately, this survey does not tell us the amount of notice (weeks or months), either formal or otherwise, that workers had.

Other tabulations from the BLS survey indicate that no group of workers received notice or expected their layoff to any great extent. At least 44 percent of the following groups had no expectation of layoff: workers with more than three years tenure on the jobs, workers whose plant closed, manufacturing workers, workers who were from 30-39, 40-49, or 50-61 years of age.

The second BLS survey in January 1986 examines the experience of the 10.8 million workers dislocated between 1981 through 1985. The answers to the notice question in this survey confirm the results from the first survey. In fact, the later survey finds slightly less notice to workers losing jobs in plant closings — 54.7 percent receiving notice or having an expectation of layoff in the recent survey versus 56.7 percent in the earlier survey. This means there is no evidence of any increase in the number of workers receiving notice over the last several years.

There is only one conclusion that can be drawn from these studies, that insufficient notice is provided to American workers. In fact, there is no existing study from any source that asserts the contrary.

Is Notice Harmful?

Those who oppose a legislated notice requirement have contended that mandatory notice is a burdensome government regulation that is harmful to business.

In recent public discussion of the issue, business leaders frequently claimed that productivity would fall after notice was given, thus harming the company and speeding a shutdown. All of the recent studies, however, call this assertion into question. Many note that productivity has frequently risen following a notification of a closing.

For instance, the Conference Board report (pp. 7-8) notes that company managers responsible for closure believed that "advance notice, combined with generous severance plans, reduces pressure and anxiety, generates good will, and contributes to improved productivity."

The recent CED report (p. 45) states, "Some companies are reluctant to provide notice, fearful of employee disruptions and the fall-off in productivity. Experience, however, suggests the contrary."

Likewise, the Department of Labor Task Force (p. 23) reports that "many of the fears regarding advance notification have not been realized in practice. In this regard the Task Force found no evidence that the productivity of the work force is adversely affected during a notification period."

The recent OTA report examines that the allegation about trouble with workers and reduced productivity and states (p. 22), "There seems to be general agreement that this is a myth." OTA reports that every business representative at one of their workshops agreed that worker morale and productivity did not suffer with advance notice of layoffs or closings.

The OTA report examines other claims that advance notice is burdensome. Regarding the potential loss of customers and increased credit pressure, OTA reports (p. 2) that "it is difficult to find actual occurrences of customer or creditor desertion following notice" and that "while loss of credit is a potential problem for firms, advance notice can benefit creditors and customers." Moreover, OTA cites evidence (p. 22) that dire financial emergency seems to be an infrequent factor in plant closings and large layoffs. OTA concludes (p. 3) that "it is more difficult to find evidence of the costs than evidence of the benefits of advance notice."

Other Countries

A significant amount of attention is being paid to the Canadian experience with its rapid response teams — the Industrial Adjustment Service. What is sometimes ignored is that a basic premise of this program is that research and planning is necessary and, therefore, advance warning is essential. OTA reports (p. 33) that three-fourths of Canada's workforce is covered by advance notice requirements for collective dismissals. In Canada, OTA reports (p. 38), "Advance notice of plant closings and mass layoffs seems to be taken as a matter of course" and that advance notice (p. 20), "is not a controversial issue in Canada." And, "Most Western European countries require notice so that adjustment services can be planned, and also require consultation on alternatives for limiting or avoiding the dismissals" (OTA, p. 33). These laws are a response to a 1975 European Community directive. There, as in Canada, the provision of notice is not controversial but, rather, is considered reasonable business practice. As the Department of Labor Task Force reports in its evaluation of foreign experiences (p. 20), advance notification has been a useful and important first step in providing time for workers to find alternative employment or training before layoff.

The facts seem clear. Business in other developed countries is able to live with advance notice requirements, including U.S.-based multinationals operating overseas. Business in the U.S. is no less able to do so.

Conclusion

The facts are clear. A variety of recent studies have brought greater clarity and a degree of consensus to the debate regarding advance notice. The importance of advance notice to an effective national adjustment program has been demonstrated. Business fears regarding notice have been shown to be largely unfounded. It is now time to create a dislocated worker program with an advance notice component.

BIBLIOGRAPHY

1. Podgursky, Michael and Swaim, Paul "Labor Market Adjustment and Job Displacement: Evidence from the January, 1984 Displaced Worker Survey," Final Report, Bureau of International Labor Affairs, U.S. Department of Labor, January 1986.

2. General Accounting Office, "Preliminary Analysis of U.S. Business Closures and Permanent Layoffs During 1983 and 1984," Human Resources Division.

3. Berenbein, Ronald E., *Company Programs to Ease the Impact of Shutdowns*, Conference Board Report 878, 1986.

4. *Economic Adjustment and Worker Dislocation in a Competitive Society*, Report of the Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation, December 1986.

5. Office of Technology Assessment, *Plant Closing: Advance Notice and Rapid Response — Special Report*, U.S. Government Printing Office, September 1986.

Dislocation: Who, What, Where and When

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Introduction

Our knowledge about dislocated workers has vastly improved as a result of the two recent Bureau of Labor Statistics (BLS) Dislocated Worker Surveys (DWS). In particular, descriptive information on the number of recently dislocated workers and their labor force experience following dislocation (joblessness, reemployment, wage levels in new jobs) has become available. Moreover, these DWS data files have been used to study the determinants of the joblessness and earnings losses of dislocated workers. This paper attempts to expand our knowledge of dislocation by comparing rates of dislocation across population subgroups (race, gender), wage levels and geographic areas and across time periods.

Recent descriptions of the dislocated worker population have focused on the absolute magnitude of the population and the number of dislocated workers from various subgroups -- primarily industry, occupation and region. This type of analysis, however, does not allow us to accurately discern the disparate impact of dislocation on regional or racial subgroups. When rates of dislocation are examined several commonly accepted notions about dislocation turn out to be inaccurate, particularly, the notion that dislocation is primarily a problem of Midwestern, white, male high wage workers.

Rates of dislocation are needed for the same reasons we focus on poverty rates as well as the number and types of persons with poverty level incomes. It is necessary to construct poverty rates in order to compare the presence of poverty in our society at different points in time and between groups. For instance, it is worthwhile knowing that the majority of poor people are white while also knowing that minority groups have the highest rates of poverty.

The principal conclusions are:

. There has been a higher rate of job loss in the 1980's than in the 1970's. Thus increased dislocation is not the result of the Reagan recession since there was as much dislocation in 1985 as in the recovery year of 1983. Rather, we are experiencing large structural shifts in employment.

. When rates of dislocation are examined several commonly accepted notions about dislocation prove inaccurate, especially the notion that dislocation is primarily a problem of Midwestern, white, male, high wage manufacturing workers.

. Dislocation is a national problem, with the highest rates of dislocation occurring in two subregions of the South and in the Rocky Mountain states with the industrial Midwest region having the fourth highest dislocation rate. Job loss due to plant closings exhibit a similar pattern.

. Minorities experience the highest rate of dislocation, particularly Hispanics. Men have a greater rate of job loss than women.

. From 2.0 to 2.7 percent of the workforce was dislocated each year in the 1981 to 1985 period.

. Manufacturing workers experience high rates of job loss, equivalent to more than 4 percent annually. However, several non-manufacturing industries experience high dislocation rates, including mining, construction, transportation and wholesaling.

. Dislocated workers generally had lower and upper middle paying jobs. Contrary to the assertions of some critics of dislocated worker programs, the majority of workers dislocated from full-time jobs had below average wages.

The first section reviews the methods used to compute rates of dislocation. The second section compares dislocation rates of various demographic groups, industries, wage classes and regions. The last section examines the changing rates of dislocation over time.

I. Computing Rates of Dislocation

A rate of dislocation represents the percentage of a population group experiencing dislocation in a particular time period. This requires a measure of the number of dislocated workers and of the size of the potentially affected population and a choice of a time period. This paper draws on the BLS Dislocated Worker Surveys (DWS) to compute dislocation rates, as described in detail in the appendix. These data are combined with information on average employment and the number of people with work experience in 1983 to compute rates of dislocation for the 1981-85 period covered by the last DWS data file.

Two definitions of dislocation are employed. The first is all adult workers who lost their job due to a plant closing, the abolition of a job, slack work or from a self-employment business failure. This definition closely matches the population eligible for current and proposed legislation dealing with dislocated workers and is hereafter referred to as the "eligible" population. The second population group is the full-time non-agricultural wage and salary workforce, excluding students, household workers and those over 61, that hereafter is referred to as the "full-time" population. This is the population of dislocated workers studied by Professors Podgursky and Swaim of the University of Massachusetts. As a result, it is for this group that we have the most detailed knowledge of the effects of dislocation on earnings losses and joblessness. The dislocation rates reviewed below are thus an important complement to this already accumulated information.

Table 1 presents the array of aggregate dislocation rates measured for our two populations, full-time workers and eligible workers, and for the total population measured according to average employment and those with work experience in 1983[1]. As described in the appendix, the number of people with some work experience in a year exceeds the average employment level since many workers spend part of a year unemployed or out of the labor force. Computing a rate of dislocation per employee weights the workforce's work experience according to the time spent employed.

As expected, dislocation rates per employee are higher (by 10 to 15 percent) because the employment level is less than the number of people with work experience. The figures in Table 1 also indicate that full-time wage and salary workers are more likely to experience dislocation than the eligible population as a whole. In fact, Table 1 figures imply that eligible workers who are not full-time wage and salary workers are dislocated at a rate roughly 60 percent of the dislocation rate for full-time wage and salary workers.

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[1] The actual eligible population is larger since those with long-term unemployment and those affected by natural disaster are included and is less to the extent that some of those in the DWS will not be leaving their industry or occupation, e.g., construction workers. Plus, some workers in seasonal jobs may be eligible.

The work experience data for the full-time population are drawn from specially prepared BLS tabulations and for the eligible population is for all adults with work experience, available from BLS in unpublished tables. Average adult employment data from Economic Report of the President, 1986, p. 290. Full-time wage and salary employment is from BLS Handbook of Labor Statistics (June 1985), Table 20 for non-agricultural wage and salary workers and was reduced by the proportion of teens in wage and salary employment (Employment and Earnings January 1984, p. 194).

Despite their differences, however, all of these measures indicate an annual rate of dislocation of from 2.0 to 2.7 percent a year for the five year period from 1981 to 1985.

2. Dislocation Rates by Region, Demographic Group and Industry

(a) Region

Tables 2 and 3 present information on the amount and rate of dislocation in each BLS region (as defined in Table 1) for the period 1981 to 1985. Information is presented separately for total dislocation and for dislocation due to a plant or facility closure or relocation. Table 2 relates to the total "eligible" population while Table 3 relates to the "full-time" population.

The first thing to note in these tables is that dislocation is clearly a national problem, not confined to any particular region. However, contrary to the treatment of the dislocation problem by the popular press, the areas hardest hit by dislocation are the Southern states stretching from Kentucky and Alabama over through Texas and Oklahoma. This is true for each of the populations studied -- full-time workers and all adult workers. The region with the next highest percentage of its full-time workforce experiencing dislocation is the Mountain area covering Montana down to Arizona. The industrial Midwest also has a high dislocation rate, with over 13 percent of its workforce losing the jobs in the 1981-85 period. The areas least affected by dislocation are the Northeast states from Pennsylvania northward.

The regional pattern of job loss due to plant or facility closures mirrors that for total dislocation, with the Mountain states and areas in the South Central region being hardest hit.

Unreported tabulations for the 1979 to 1983 period exhibit the same pattern of job loss across regional areas.

This is a clear example of the importance of examining rates of dislocation in addition to the absolute numbers of dislocated workers. While it is true the greatest number of dislocated workers come from the industrial Midwest, this is true only because this area has a large share of the population not because it is the hardest hit by dislocation. Rather, it is areas in the South and West that experience the highest rates of dislocation.

(b) Demographic Groups

Table 4 breaks down full-time wage and salary dislocation and presents dislocation rates by demographic groups[3].

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[3] Denominators are drawn from specially prepared BLS tabulations, as is the case for all of the following Tables relating to the full-time population. BLS only provided the figure for all "full-time" Hispanics with work experience. The gender breakdown was estimated based on the gender shares of the Hispanic full-time wage and salary workforce in 1985, using the recent reweighting of Hispanics.

One expected result is that male workers experience higher rates of dislocation, some 40 percent greater than women workers. This disparity is true among whites, blacks and Hispanics, although the male/female difference in the Hispanic community is only 16 percent.

Minority workers experience greater rates of dislocation than white workers. The gap between the rates of white and black workers, however, is relatively small considering the well-known fact that black unemployment is more than double that of white unemployment. An explanation for this is that the greater unemployment among blacks probably reflects longer spells of unemployment, at least for dislocated workers. Studies by Professors Podgursky and Swaim indicate that black dislocated workers experience double the joblessness of other workers following dislocation.

One surprising result is that Hispanic workers, particularly males, have the highest dislocation rates, with over 3 percent of the male Hispanic workforce dislocated each year. The reasons for this are unclear and need to be the focus of future research.

Overall, males among all racial groupings experience higher rates of dislocation and minorities experience the most dislocation, especially Hispanics, who have dislocation rates 20 percent greater than the average. This pattern is evident for all dislocations and for those related to plant closings, except that males and females experience more similar rates of job loss due to plant or facility closures.

(c) Industry

Table 5 presents information on dislocation by major private sector industry group.

As in prior tables, this information is presented separately for all dislocation and for the dislocation due to plant closures. The data applies to full-time wage and salary workers.

As would be expected, manufacturing workers have a very high rate of dislocation. In fact, over one in five manufacturing workers lost a job in the 1981 to 1985 period, a rate of dislocation equivalent to having 4.2 percent of those with work experience in manufacturing each year become dislocated. Each year, about 2 percent of the manufacturing workforce loses a job due to plant closings.

Full-time manufacturing workers comprise a large part of the dislocated workers population -- 47.5 percent of all dislocation. Yet, it is clear that worker displacement extends far beyond manufacturing. The sector with the highest rate of dislocation was mining, with 40 percent of its workers losing their jobs. Other sectors with higher than average rates of dislocation include construction, transportation and wholesale trade. Further disaggregation will likely reveal other industries with high dislocation rates.

These data indicate that although manufacturing workers experience heavy rates of dislocation, the effects of dislocation extend to all sectors. Moreover, there are several non-manufacturing industries experiencing high rates of dislocation.

(d) Wage Level

Information on where dislocated workers stand in the wage distribution is presented in Table 6. Unpublished tabulations by BLS provide the information on the breakdown of the full-time workforce's weekly wage distribution into "tenths," as presented in column (2). The actual percent of the workforce contained in each "tenth" is shown in column

(3). The "lumpiness" of the data -- the fact that survey responses cluster around certain values, mostly even dollar amounts -- prevented a clean breakdown of the workforce into equal "tenths[3]." Data on full-time dislocated workers' weekly earnings on their prior job were inflated and deflated to 1983 values using the wage and salary index of the employment cost index[4]. This was done for each of the DWS surveys. The distribution of dislocated workers by wage level is shown in columns (4) and (5). The rate of dislocation by wage level is presented in the last two columns. The information is aggregated into quintiles, or "twentyiths," in the bottom of the table.

It is frequently assumed or asserted that dislocated workers are primarily high-wage workers. These data, however, show that in each of the two BLS surveys a majority of dislocated workers (57.4 percent and 55.5 percent) had below average earnings. Yet, it is also true that the lowest rates of dislocation were at the lowest and highest end of the wage scale. Or, in other words, dislocation hit the middle income workers, broadly defined, the hardest, with the highest rates of dislocation occurring in the 40 percent of the workforce below the average (median) wage and the 30 percent of the workforce above the average wage. There is no apparent empirical basis for the claim by some critics of dislocated worker programs that they involve a transfer of resources from low to high-wage workers.

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[3] BLS estimated the decile cutoffs and populations from the WES covering 1983 using average weekly wage estimates based on annual salary and weeks worked data.

[4] Precisely, different deflators were applied to blue collar, white collar and service workers based on their wage and salary growth. Both survey results are presented since using the deflators each could be made compatible with 1983 decile data.

3. Recent Trends in Dislocation

There have also been frequent assertions about the trend of dislocation. Has it been increasing, decreasing or remained the same? How has dislocation changed over the range of the current recovery? This section attempts to shed some light on these questions using the two DWS data files which present information on dislocation in particular years.

Table 7 presents information on the number of displaced workers from the last year of each survey, 1985 and 1983. This essentially converts each five year retrospective survey to a one year retrospective survey and therefore minimizes the recall bias. The definition of dislocation employed in Table 7 is that for the eligible workforce.

Using the DWS data on displacement two dislocation rates are presented in Table 7 for each year -- dislocation per employee and dislocation per person with work experience[5].

According to the data in Table 7, the recovery from 1983 to 1985 brought little if any reduction in the rate of dislocation and did not reduce the amount of dislocation. This can be seen by the slight reduction in the dislocation rate per worker with employment experience and the modest (8.5 percent) drop in total dislocation per employee. The slightly different trends of these two dislocation rates arises because the recovery has a stronger effect on the average time employed in the year than on the number of people who worked in the year. That the rate of dislocation moderated only slightly from 1983 to 1985 is startling given that unemployment fell from 9.6 percent to 7.2 percent and adult employment grew nearly 7 percent. There was no moderation over the course of the recovery in terms of the rate of jobs lost to plant closings. Plant closings caused the same percentage loss of jobs in 1985 as they did in 1983, confirming the presence of an ongoing structural employment shift that is causing dislocation.

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[5] Work experience data are from unpublished BLS tabulations from the WES for the relevant year. Adult employment data is from the Economic Report of the President, 1986, p. 290.

It becomes more difficult to trace dislocation beyond the years covered by the DWS data. One method previously employed by both Podgursky and Bednarzik has been to track BLS data on job loser unemployment, that is the number and percent of the unemployed and of the labor force who lost a job (other reasons are job leavers, new entrants and reentrants who are looking for work). Podgursky concluded that "Involuntary job loss has tended to increase in importance over time" when examining the 1970 to 1982 peaks and troughs[6]. Bednarzik focused on "permanently separated workers," the unemployed who lost jobs but have no recall date either specified or unspecified[7]. Bednarzik found that permanent job loss was exceedingly high in the last recession compared to other post-1969 recessions.

In other research in progress, I examined the trend in job loser unemployment in the peak years of 1973, 1979 and 1985, as presented in Table 8. There is a clear secular increase in the percent of the unemployed who are job losers, with jobs losers comprising about 39 percent of unemployment in 1973 and 50 percent in 1985. The rate of job loser unemployment has risen as well, from under 2 percent of the labor force in 1973 to 3.4 percent in 1985. These figures indicate that a higher percentage of the workforce lost jobs in 1985 than in earlier years. In fact, the last row in Table 8 shows that the majority of the increase in unemployment from 1973 to 1979 and particularly from 1979 to 1985 was due to this rising unemployment due to job loss, with 8 percent of the most recent increase in unemployment being due to increased job loss. Further analysis of job loser unemployment data shows that the increased job loser unemployment is due to an increase in permanent job loss, as defined by Bednarzik, and due primarily to a rise in the incidence of job loss and not to increased duration of spells[8]. Unfortunately the construction of the job loser unemployment data does not match the DWS data in a way that allows us to connect them. Nevertheless, earlier studies as well as the data in Table 8 provide strong support for the notion that our economy has been experiencing higher levels of permanent job loss than it did in the early 1970's. This trend continued into 1986, with 49 percent of the unemployed having lost their job and with 3.4 percent of the labor force on average being unemployed because of a job loss.

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[6] Michael Podgursky, "Sources of Secular Increases in the Unemployment Rate, 1969-82," Monthly Labor Review (July 1984), p. 22.

[7] Robert W. Bednarzik, "Layoffs and Permanent Job Losses: Workers' Traits and Cyclical Patterns," Monthly Labor Review (September 1983).

Conclusions

This paper presents an analysis of the dislocated worker population by examining rates of dislocation. Several commonly accepted notions about dislocation prove false when dislocation rates among subgroups are compared. In particular, there are several misconceptions about the regional, racial and geographic impact of dislocation and job loss due to plant closings. As a result, future analyses of dislocation should be rounded out by incorporating an analysis of rates of dislocation.

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[8] That is, average unemployment is the product of the incidence of unemployment times the mean duration. As shown in an unpublished working paper, the in-spell duration of job loser unemployment has not increased markedly indicating the increased incidence of job loss is the reason for higher job loser unemployment, Job Loser Unemployment Analysis, Industrial Union Department, AFL-CIO, June 1986. The primary reason for higher job loser unemployment is the increase in "other losers," as opposed to those experiencing temporary or indefinite layoffs. "Other losers" are what Bednarzik called "permanent job loss."

This higher job loser unemployment is indicative of greater permanent job loss since the seasonal unemployment and "other reason" categories in the DWS are only a small proportion of total job loss and would have to have been almost nonexistent in 1973 in order to be responsible for the rise in job loser unemployment. The rising share of job losers in total unemployment implies we are observing more than a rising incidence of job loss that leads to unemployment and, in fact, are observing higher job loss, period.

Table 1: Dislocation Rates, Various Measures for 1981-1985

Adult Population (1983)	Full-Time Wage and Salary (000)	Eligible Workers (000)
(a) Work Experience	73,933	109,190
(b) Employment	66,367	94,492
Dislocated Workers	8,841	11,210
Dislocation Rate		
(a) Per Person with Work Experience	12.0%	10.3%
(b) Per Employee	13.3	11.8

Table 2: Dislocation of Eligible Workers by Region, 1981-85

BLS Region*	Adult Employment	Worker Dislocation Plant Closings (000)	Worker Dislocation Total (000)	Rate of Dislocation Plant Closings	Rate of Dislocation Total
New England	5,510	235	502	4.3%	9.1%
Middle Atlantic	14,671	676	1,486	4.6	10.1
East North Central	16,439	937	2,289	5.7	13.9
West North Central	7,334	388	916	5.3	12.5
South Atlantic	15,778	742	1,601	4.7	10.2
East South Central	5,558	371	834	6.7	15.0
West South Central	10,343	629	1,466	6.1	14.2
Mountain	5,068	312	674	6.2	13.3
Pacific	13,900	783	1,798	5.3	12.9
Total	84,601	5,224	11,210	5.5	11.8

Source: Bureau of Labor Statistics January 1986 and January 1984 Dislocated Worker Survey and Geographic Employment Profile, 1983 (Bulletin 2215).

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* Regions are: New England (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut); Middle Atlantic (New York, New Jersey, Pennsylvania); East North Central (Ohio, Indiana, Illinois, Michigan, Wisconsin); West North Central (Iowa, Missouri, Nebraska, Kansas, Minnesota, North Dakota, South Dakota); South Atlantic (Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida); East South Central (Kentucky, Tennessee, Alabama, Mississippi); West South Central (Arkansas, Louisiana, Oklahoma, Texas); Mountain (Montana, Wyoming, Colorado, Utah, Idaho, Arizona, Nevada, New Mexico); Pacific (California, Hawaii, Washington, Oregon, Alaska). Region determined at time of survey.

Table 3. Dislocation of Full-Time Workers by Region, 1981-85

BLS Region*	Total With Work Experience (000)	Worker Dislocation Plant Closing (000)	Worker Dislocation Total (000)	Rates of Dislocation Plant Closing	Rates of Dislocation Total
New England	4,391	196	368	4.5%	8.4%
Mid. Atlantic	11,697	561	1,123	4.8	9.6
East N. Central	12,695	754	1,727	5.9	13.6
West N. Central	5,228	288	625	5.5	12.0
South Atlantic	12,881	653	1,275	5.1	9.9
East S. Central	4,429	300	636	6.8	14.4
West S. Central	8,251	544	1,210	6.6	14.7
Mountain	3,760	261	543	6.9	14.4
Pacific	10,601	618	1,333	5.8	12.6
	73,933	4,176	8,841	5.6%	12.0%

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* Region as defined in Table 2.

Table 4: Dislocation of Full-Time Workers by Race, Gender and Hispanic Origin, 1981-85

	Total With Work Experience	Worker Dislocation		Rates of Dislocation	
		Plant Closing	Total	Plant Closing	Total
Total	73,932	4,176	8,841	5.6%	12.0%
Male	43,295	2,678	5,905	6.2	13.6
Female	30,638	1,498	2,935	4.9	9.6
White	64,127	3,608	7,639	5.6	11.9
Male	38,183	2,349	5,188	6.2	13.6
Female	25,944	1,259	2,451	4.9	9.4
Black	7,952	454	992	5.7	12.5
Male	4,100	261	588	6.3	14.3
Female	3,852	192	402	5.0	10.4
Hispanic	4,188	288	601	6.9	14.4
Male	2,541	183	386	7.2	15.2
Female	1,647	105	215	6.4	13.1

Table 5. Dislocation of Full-Time Workers by Major Private Industry Group, 1981-85

		Worker Dislocation		Rates of Dislocation	
BLS Region*	Total With Work Experience (000)	Plant Closing (000)	Total (000)	Plant Closing	Total
Manufacturing	19,607	1,976	4,138	10.1%	21.1%
Mining	887	194	359	21.9	40.5
Construction	4,939	259	804	5.2	16.3
Transportation	3,368	277	500	8.2	14.8
Communication	1,521	56	131	3.7	8.6
Utilities	1,463	15	61	1.0	4.2
Wholesale	3,388	234	506	6.9	14.9
Retail	9,090	420	700	4.6	7.7
Finance, Ins. Real Est.	5,121	105	221	2.1	4.3
Services	20,344	583	1,278	2.9	6.3
Total	69,728	4,131	8,698	5.9%	12.5%

Table 6: Dislocation of Full-Time Workers by Weekly Wage Level

(1) 1983 Wage Decile**	(2) Upper Limit of Wage Range ($1983)	Percentage Distribution: (3) All Full-Time	Percentage Distribution: (4) Full-Time Dislocated Workers 1981-85	Percentage Distribution: (5) Full-Time Dislocated Workers 1979-83	Dislocation Rate*: (6) 1981-85	Dislocation Rate*: (7) 1979-83
1	148.36	10.01%	9.2%	8.1%	11.0%	10.0%
2	192.31	10.81	12.5	12.3	13.9	14.0
3	230.90	9.66	10.7	11.3	13.3	14.4
4	276.40	9.46	12.6	12.1	16.0	15.7
5	326.04	9.99	12.4	11.7	14.9	14.4
6	381.09	10.06	10.2	11.3	12.1	13.8
7	442.71	10.32	8.2	8.7	9.5	10.4
8	528.28	9.65	10.0	10.6	12.4	13.5
9	672.19	9.93	7.8	7.8	9.4	9.7
10	---	10.09	6.2	6.1	7.4	7.4
Total		100.0	100.0	100.0	12.0%	12.3%
Quintiles						
1	$192.31	20.82%	21.7%	20.4%	12.5%	12.1%
2	276.40	19.12	23.3	23.4	14.6	15.1
3	381.09	20.05	22.6	23.0	13.5	14.1
4	528.28	19.97	18.2	19.3	9.4	11.9
5	---	20.02	14.0	13.9	8.4	8.5
Total		100.0	100.0	100.0	12.0%	12.3%

* Calculated as the ratio of the percentage of dislocated workers in a wage class (columns (4) and (5)) to the number in that class (column 3) times the average rate of dislocation for the survey.

** From unpublished BLS tabulations of average weekly wages of the "full-time" worker population in 1983.

Table 7. "Eligible" Population Displacement Rates for 1983 and 1985

	1985* (000)	1983* (000)
Displaced Workers*		
(a) Total	3,514	3,558
(b) Plant Closings	1,184	1,145
Population		
Adult Employment	100,716	94,491
Adults With Work Experience	114,529	109,190
Dislocation Rate		
(a) Total		
Per Person with Work Experience	2.9%	3.0%
Per Employee	3.2	3.5
(b) Plant Closings		
Per Person with Work Experience	1.0%	1.0%
Per Employee	1.2	1.2

* Includes data from the following January, so the displacement data refers to a twelve and a "half" month period.

Table 8: Job Loser Unemployment

				Change	
	1985	1979	1983	1979-85	1974-79
(1) Unemployment Rate	7.2%	5.7%	4.8%	1.5%	0.9%
(2) Job Losers as % of Unemployed	49.8	42.9	38.7	6.9	4.2
(3) Job Loser Unemployment Rate	3.6	2.4	1.9	1.2	0.5
(4) Job Loser Share of Increased Unemployment*				80%	56%

* Row (3) as a percent of Row (1)

Appendix: Computing Rates of Dislocation

A rate of dislocation is a simple notion. It is the number of workers in total or in a particular group that experienced dislocation as a percentage of the total or particular group population. The rate of dislocation thus informs us of the percentage of a group that was affected by dislocation in a particular time period. The construction of a dislocation rate requires (1) a numerator which counts the absolute number of dislocated workers from a particular population; (2) a denominator which counts the number of workers of a particular population who were potentially affected by dislocation; and (3) a time period.

A. Defining Dislocation

Selecting the numerator for the rate of dislocation requires a particular definition of dislocation. Studies of dislocation in the early 1980's were forced to tailor their definitions of dislocation to fit the available data sets on hand, either the monthly BLS Consumer Population Survey (CPS) of households used to measure unemployment or Continuous Work Histories (CWH) derived from unemployment insurance case histories. These studies were seriously in error because they were forced to use proxies for dislocation such as "being unemployed from a declining industry or occupation," leaving them unable to discern the number of workers who had permanently lost their jobs but had either found new jobs or left the labor force and did not count those who did not previously work in declining occupations or industries.

The recent BLS Dislocated Worker Surveys avoids these problems since they were exclusively designed to identify the dislocated worker population.

These surveys are supplements to the CPS for the months of January 1984 and 1986. Each survey identifies adults (those 20 years and older) who had lost a job to which they have not returned and asks them for a variety of labor force information. These surveys describe the dislocated worker population for two roughly five year periods, 1979 to January 1984 and 1981 to January 1986.

These DWS data files are used to measure the number of dislocated workers in computing dislocation rates. As a result, the time periods for which dislocation rates can be measured are mostly predetermined, primarily the five year intervals of 1979 to 1983 and 1981 to 1985.

This still leaves open the precise definition of the dislocated worker population to be drawn from the DWS files. This arises because the BLS data provides information on the reasons for the job loss and a worker's tenure on his or her job, both of which have been used by BLS and others to limit the definition of a dislocated worker to a smaller subgroup than all workers who permanently lost their jobs, e.g., one BLS restriction in its studies is that a dislocated worker must have had three years or more tenure on the lost job.

There has been much confusion about the definition of dislocation partly due to a lack of clarity concerning why we are attempting to measure dislocation. There is not one universal best definition of dislocation for all purposes. A better approach is to pose the question and then select the appropriate definitions of dislocation for answering that question. However, a base line agreement must be that dislocation inherently implies the involuntary permanent loss of a job.

Some of the reasons for examining the dislocated worker population and needing to define it are:

1. Public Policy

There is a need to measure the size of the population eligible for existing or proposed programs to assist dislocated workers. Judging from the current legislation's (Title III of JTPA) definition of dislocation and the eligibility criteria of proposed legislation, one's definition of dislocation should be very broad. Title III began as a program for workers who lost, or were about to lose, a job to which they were unlikely to return and for those experiencing long term unemployment. Congress has since expanded the eligibility to include farmers and the self-employed. The current Reagan Administration proposal for a new expanded dislocated worker program maintains this same broad definition as does the recent legislative proposal by Senators Kennedy, Metzenbaum and Simon and Representatives Clay, Ford and Martinez. A recent Administration-appointed task force on dislocation recommended a program that would be available to all workers affected by a plant closing or mass layoff and to all workers with three years of recent work experience (not tenure) who lost their job, a set of eligibility criteria that would allow participation by almost all adult workers who permanently lose their jobs. Overall, for political reasons and for program flexibility, public policy makers have seen dislocation in broad terms.

2. Efficiency

Some analysts want to focus on the workers who lost jobs and that are likely to experience the greatest economic losses. This population is often thought to be those workers who have had a substantial, long term attachment to the lost job. This implies the addition of a tenure on the job criteria into the definition of dislocation. Such a criterion is also implicit in much of the writing in the popular press on this topic.

3. Structural Change

There is also an interest in the trend in the amount of job destruction occurring in the economy. Dislocation occurs when a job is destroyed and the necessary employment reduction cannot be attained through attrition. Dislocation thus relates to an important dimension of the labor market, the gross loss of jobs. It is this gross loss of jobs balanced against the gross creation of new jobs that determines the net change in available jobs. To glean information on job destruction from information on dislocated workers requires a broad definition.

4. Equity

We are frequently told that technological change and an internationally open trading system is beneficial to the economy. This is based on analyses which theoretically show that if those who gain from the technological change and unregulated international trade compensate

> the losers then we all would be, on balance, net gainers. It is also frequently argued that programs for trade impacted workers or all dislocated workers are necessary so as to minimize "protectionist sentiment" and resistance to necessary technological change. In this view, the dislocated worker population should be all those involuntarily displaced from their jobs with no tenure criteria. After all, low tenure workers in some ways may have the most to lose since their prospective years of work are greater.

This paper employs two definitions of the dislocated worker population which can be contrasted to the BLS definition. The DWS includes all workers aged 20 and over at the time of the survey who lost their jobs in the prior five years because of: (1) a plant or company closing down or moving; (2) slack work; (3) the abolishment of a shift or a job; (4) a seasonal job being completed; (5) a self-operated business failure; or (6) all other reasons. The BLS definition restricts dislocation to those worker who lost jobs due to the first three reasons (plant closure or move, slack work, or abolition of job or shift) and had three or more years of tenure on the lost job. The two definitions used below are each broader than the BLS definition because the focus of interest is on the population eligible for currently proposed legislation and on the tendencies in the economy towards dislocation.

1. Dislocated Adult Workers: All workers in the DWS except those displaced because of "other reasons" or the end of a seasonal job.

2. Full-Time Adult Workers: All non-agricultural workers displaced from a

full-time job except those displaced for "other reasons," end of seasonal employment or self-operated business failure. Also excluded are students, household workers and those over 61 years old.

Neither definition relies on a tenure criterion as does the BLS definition. The first definition comprises all workers that would be eligible for the current JTPA Title III program as well as for the major proposed legislative programs, except that seasonal workers might also be eligible (numbering 465,000 for the 1981-85 period[1]). This assumes, as does BLS, that those displaced for "other reasons" include only workers who were "fired" from their jobs. The second definition is that used in studies by Professors Podgursky and Swaim of the University of Massachusetts[2]. The earnings losses, joblessness and other dimensions of the labor force experience of this dislocated worker population have been amply studied using sophisticated econometric techniques. The rates of dislocation presented in this paper thus complement the most detailed available knowledge on the effects of dislocation.

B. The Potential Population

The ideal denominator for the computation of a dislocation rate is one that conceptually matches the numerator, which in this case is derived from the DWS data files. The DWS asks respondents if they lost a job in the last five years. To precisely discover the population that could have been dislocated we would have to know how many people in the entire CPS sample (the monthly household survey from which the DWS population was drawn) had worked at all in the last five years and how many weeks they had worked. With this information we could compute the amount of dislocation per person with some work experience in the last five years or per employee.

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[1] See footnote one of paper.

[2] See among others, Michael Podgursky and Paul Swaim, "Labor Market Adjustment and Job Displacement: Evidence from the January, 1984 Displaced Worker Survey." Final Report, Bureau of International Labor Affairs, U.S. Department of Labor, January 1986.

Since this information on the number of people who worked at any time over the prior five years is not available, we must settle for second best and determine the extent of any possible error thereby introduced into our computations.

Our choice of denominator is from two kinds of data. One relates to work experience and the other to employment and each is related to a one year period rather than a five year period. Each March the BLS conducts a survey called the Work Experience Survey (WES) which provides respondents' recollection of their labor force experience in the prior calendar year. The WES can be used to determine the number of people with any employment during a particular year. This should not be confused with the employment level. Since many people have some unemployment or work only part of a year the number of people with some work experience in a year is larger than the average number of people employed each month -- the employment level. In 1985, for instance there were 123.5 million people with work experience; yet, the average employment level in 1985 was only 107.2 million.

These two concepts are related in the following way:

$$N = \sum W_i P_i,$$

Where N is the average employment level in a year, W_i has the value of one if individual i had any employment in the year and the value of zero otherwise, and P_i is the percentage of the year worked by individual i. That is, the average employment level is a weighted average of people's work experience with the weights being the percentage of the year that each person worked.

This clarifies our choice for computing a rate of dislocation. We can use the work experience data and compute the number of dislocated workers per person with work experience or use employment figures and compute the percentage of the employed workforce dislocated in a particular time period. It appears appropriate to use employment levels rather than work experience since people not working cannot be dislocated i.e. people's work experience should be weighted by the time they are employed. Neither, however, can be said to be the "true" denominator and both are employed in the paper. The work experience data used to compute rates of dislocation are taken from unpublished tabulations prepared by BLS from the March 1984 WES covering 1983. Employment data were drawn from regularly published BLS documents.

In comparing dislocation rates across groups (cross-section comparisons) or across time, as is done in this paper, the most important factor is to use a comparable denominator for each group. That is, consistency is the most important issue. As long as this is done then the comparisons across groups or time periods are valid. Using several measures checks the sensitivity of any conclusions to the particular measure employed.

This leaves us the question of what time period the denominator should cover. The numerators relate to the five year periods covered in the retrospective surveys. The problem is that the available data cover only one year at a time. That is, we only have good data on the employment level or the number of people with work experience in one particular year. The rates of dislocation computed in this study primarily rely on the work experience survey for 1983, the midpoint in the most recent survey covering 1981 to 1985. How does this bias our results? BLS data on those not in the labor force indicate that the bias is slight. The number of people who were not in the labor force in 1985 who had worked within the last 5 years numbered 2,097,000[5]. Those with jobs at one time in 1985 numbered 123.5 million. So, the number of people with work in one year represents roughly 98.3 percent (123.5 divided by 123.5 +2.1) of the number of people who worked at sometime in the prior five years. This margin of error means that a five year dislocation rate of 12 percent using a denominator covering one year's workforce would be equal to 11.8 percent if calculated using the workforce over a five year period. Thus, the dislocation rate is overstated by only 1.7 percent (12/11.8-1).

The year 1983 was chosen as the midpoint in the last survey's time period. In terms of adult employment, the year 1983 is also very near to the average for the entire five year period (94,491,000 vs the average of 95,984,000). Similarly for work experience (all workers), the year 1983 was close to the five year average (117,718,000 vs the average of 119,081,000).

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[5] See Employment and Earnings, January 1986, Table 38.

This bias towards slightly higher dislocation rates is more than balanced by biases inherent in the survey towards lower rates of dislocation. One slight bias is that workers may have experienced more than one dislocation in a five year period. Another is that some of those who are categorized as displaced for "other" reasons may not have been fired. An even larger bias is introduced by the recall bias built into the survey. We can see this bias by comparing the estimate of the number of displaced workers (all reasons) from the January 1984 vs the January 1986 survey for the overlapping years of 1981, 1982 and 1983. The earlier survey counted 10.2 million displaced in those years (excluding the 181,000 displaced in January 1984) while the latter survey counted 6.4 million, or only 63 percent of the earlier estimate. This disparity implies that respondents are less likely to report dislocations the longer the survey time is from the actual dislocation. In this case the disparity is quite large and indicates that the five year retrospective bias of the DWS severely understates dislocation. This large recall bias is also evident if one examines the two overlapping years of 1981 and 1982, where the latter survey finds only 67 percent of the dislocation identified in the earlier survey. Thus, the apparent recall bias is not due to the fact that 1983 is the last year of one survey and thus may overstate dislocation in that year because some respondents have lost a job to which they might later return.

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March 27, 1987

The Honorable Paul Simon
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Washington, DC. 20510

Dear Senator Simon:

Attached please find copies of several resolutions recently adopted by the NACo Board of Directors urging modification and support for a number of job training legislative proposals. County officials have discussed these proposals and made recommendations based on what they believe will work best at the local level. In summary we urge you to support the following:

o ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE (S.538/S.539/H.R.1122/H.R.1155/H.R.90)

Enact legislation that would increase assistance available for dislocated workers. To avoid duplication and waste, we urge that grants be extended to all established service delivery areas under the Job Training Partnership Act. We also urge that no less than $980 million be appropriated for fiscal year 1988 and that the current JTPA Title III formula be used to distribute funds to SDAs based on the population criteria in current law. We further urge that local elected officials and private industry councils be given review and approval authority over all worker adjustment assistance programs operating in their SDA. Payments to participants in lieu of UI benefits should be charged to training costs. Service delivery areas should also be permitted to pool administrative funds from this program with the administrative funds of other JTPA programs.

o SUMMER YOUTH SUPPLEMENTAL (H.R.790)

Enact a $100 million supplemental appropriation for the 1987 summer youth program. Funds for the supplemental should not reduce funding available for next year's summer youth program or the funding levels of any other JTPA program. Without a supplemental, some service delivery areas will suffer drastic cuts in funds and summer jobs. See NACo's survey of how some areas will be affected in attachment I.

- YEAR-ROUND BASIC AND REMEDIAL EDUCATION FOR AFDC YOUTHS (S.514/S.539/H.R.1155, TITLE I-D)

  Enact legislation that would provide service delivery areas the flexibility to use summer youth funds for year-round basic and remedial education for youths in families receiving any public assistance. We would also urge you to reject changes in the current summer youth program (JTPA Title II B) distribution formula.

- EMPLOYMENT SECURITY AND UNEMPLOYMENT COMPENSATION REFORM (S.539/H.R.1155, Titles I-F and G)

  Enact legislation that would devolve administrative responsibility for Employment Security and Unemployment Insurance to the states but reject the devolution of federal financial responsibility for Employment Security and Unemployment Insurance to the states. We further urge that changes be made in the ES system that would require local elected official and private industry council approval and oversight of employment service plans and operations in service delivery areas.

- INCENTIVE BONUSES FOR THE PLACEMENT OF LONG-TERM WELFARE CLIENTS (S.514)

  Legislation should only be enacted if: (1) new initiatives to place long-term clients in jobs are supported with additional federal funds, (2) states are required to pass the incentive bonus payments through to JTPA service delivery areas based on placements, (3) service delivery areas are permitted to use at least 15 percent of the incentive bonus payments for administrative costs, (4) and a feasible participant tracking and reporting system can be established. We would also urge Congress to reject any amendments to JTPA which would impose limitations on the carryover of the 6 percent incentive grants and other discretionary funds under Title II A. We would further urge that the JTPA performance standards be modified to accurately reflect the true costs and expected placement rates for long-term and potentially long-term dependent individuals.

Again, we urge you to adopt the above positions as you take action on the pending job training legislative proposals. If you have any questions, please contact Larry Jones of my staff.

Sincerely,
John P. Thomas
John P. Thomas
Executive Director

LJ:dr
Enclosures

NACo SURVEY ON IMPACT OF SYEP FUNDING REDUCTIONS ON SOME SDAs

[illegible]	Funding [illegible]	[illegible]	[illegible]	% Change [illegible]	Participant Served [illegible]	[illegible]	[illegible]	% [illegible]	[illegible]
Alabama State	[illegible]	[illegible]	[illegible]	[illegible]	9400	8700	7450	[illegible]	[illegible]
Mobile Count.	$1,800,000	$1,700,000	$1,150,000	-34%	1724	1575	1184	[illegible]	14%
Arkansas Southeast	$997,239	$913,030	$848,291	-14%	705	700	625-700	+40%	N/A
California Fresno City	$3,200,000	$3,100,000	$2,200,000	-32%	3153	3251	1986	40%	9%
Merced	$743,631	$859,445	$540,816	-27%	721	773	550	-24%	
City/County of San Francisco	$3,066,738	$3,047,950	$2,074,153	-33%	4024	3601	2400	-41%	N/A
Connecticut Bridgeport	$2,518,225	$1,449,574	$1,686,435	-37%	2109	1964	1467	-31%	N/A
Florida Northeast	$931,829	$651,000	$434,000	-54%	649	440	300	-54%	17%
Sarasota	$729,634	$751,960	$446,341	-39%	563	556	400	-29%	N/A
Illinois St. Clair	$1,528,208	$1,443,574	$1,264,344	-18%	1240	1240	1066 (projected)	-15%	4%
Indiana Shawnee Trace	$1,183,294	$1,092,219	$897,563	-25%	851	741	615	-28%	N/A
Iowa Waterloo	$855,040	$960,766	$826,224	-4%	741	779	650	-12%	N/A
Louisiana Rapides Parish	$441,052	$467,034	$517,209	+15%	484	480	480	-1%	14%
Massachusetts Berkshire	$572,719	$639,029	$423,766	-27%	500	530	216	-57%	30%
Minnesota Rural	$1,771,741	$1,771,743	$1,392,908	-22%	1812	1174	920 (projected)	-49%	20%
Washington Co.	$157,098	$145,057	$99,000	-37%	101	108	70	-31%	19%
Mississippi Jackson	$1,459,392	$1,182,034	$1,197,748	-18%	913	92[illegible]	700 (projected)	-24%	15%
Missouri [illegible] SDA 7	$728,894	$651,000	$599,298	-18%	518	457	439	-16%	5%
St. Charles	$335,097	$176,134	$168,976	-49%	175	150	80	-55%	9%
Nebraska Lincoln	$364,506	$336,451	$249,665	-32%	781	295	190 (projected)	-75%	6%
New York Oyster Bay Coast	$1,075,374	$946,452	$624,012	-39%	658	564	350	-47%	11%
New Jersey Newark	$5,511,296	$4,531,416	$3,445,547	-35%	6500	6341	4370	-19%	14.5%

North Carolina									
Cumberland Co.	[illegible]	[illegible]	[illegible]	-41%	785	669	550	[illegible]	[illegible]
Pennsylvania									
Central Reg	N/R	$1,132,970	$972,724	15%	N/R	1020	902	-22%	9%
Lehigh Val	$1,647,016	$1,219,459	$1,365,058	-15%	1791	1309	1245	-4%	[illegible]
Washington									
Olympic Const.	$633,705	$625,444	$473,315	-25%	379	365	283	-25%	N/R
Pentad	$890,000	$792,000	$722,000	-18%	755	675	550	-28%	10%
Spokane City/Co	$1,290,670	$1,110,883	$906,000	-30%	663	648	450	-33%	[illegible]
Virgin Islands	$387,514	$380,370	$333,871	-12%	[illegible]	550	600 *	+100%	20%

* Includes Title II A Funds

N/R: No Report

EMPLOYMENT STEERING COMMITTEE
RESOLUTION ON
WORKER ADJUSTMENT ASSISTANCE PROGRAMS

WHEREAS, massive layoffs, plant closings, natural resource-based industry closings and small business closings have had a devastating impact on local communities in recent years, leaving many residents without marketable skills and consequently, eroding the tax base of many local governments; and

WHEREAS, there is a great need to establish a comprehensive program to respond to the diverse needs of dislocated workers to assist them in becoming gainfully employed; and

WHEREAS, the Job Training Partnership Act (JTPA) is designed and is currently being used to assist dislocated workers under Title III; and

WHEREAS, several legislative proposals have been introduced in Congress that would establish a new comprehensive program for dislocated workers and terminate Title III of the JTPA; and

WHEREAS, the worker adjustment assistance program proposed by the Administration would provide grants to service delivery areas with populations of 500,000 or more and would assure the participation of local elected officials and private industry councils in developing smaller grant recipients;

THEREFORE BE IT RESOLVED, that the National Association of Counties urges Congress to enact worker adjustment assistance legislation that would extend grants to all JTPA established service delivery areas;

BE IT FURTHER RESOLVED, that the National Association of Counties urges Congress to enact worker adjustment assistance legislation that would provide grants to existing service delivery areas consistent with JTPA to prevent duplication of services; and

BE IT FURTHER RESOLVED, that Congress should enact a worker adjustment assistance legislation that would:

1. establish a pass through formula to service delivery areas in the same manner as the Administration's proposed formula to the states;
2. provide no less than $980 million during Fiscal Year 1988;
3. require review and approval of all programs operating within a service delivery area by the private industry council and local elected officials;
4. allow payments to participants in lieu of Unemployment Insurance payments to be charged to training costs;
5. permit administrative cost pooling with those of the JTPA funds.

Passed by the Employment Steering Committee
March 15, 1987 (unanimous)

EMPLOYMENT STEERING COMMITTEE
RESOLUTION ON
A SUPPLEMENTAL APPROPRIATION FOR THE JTPA SUMMER YOUTH EMPLOYMENT AND TRAINING PROGRAM
1987

WHEREAS, the funding levels for the Summer Youth Employment and Training Program has decreased over the last three years by 23%, despite the fact that youth unemployment remains significantly higher than adults; and

WHEREAS, the reduction in funds would reduce the level of services available to youths nation-wide by an estimated 133,000 jobs; and

WHEREAS, the level of responsibility for the Summer Youth Employment and Training has increased with the addition of required remediation efforts;

THEREFORE BE IT RESOLVED, that the National Association of Counties urges Congress to enact a supplemental appropriation of $100 million for the JTPA Summer Youth Employment Program in 1987. This supplemental appropriation should not affect the funding levels of any other JTPA program(s).

Recommended by the National Association of Counties Training and Employment Professionals
March 15, 1987

Passed by the Employment Steering Committee
March 15, 1987 (unanimous)

EMPLOYMENT STEERING COMMITTEE
RESOLUTION ON
THE PROVISION OF YEAR ROUND BASIC AND REMEDIAL EDUCATION TO YOUTHS IN AFDC FAMILIES

WHEREAS, the Administration has proposed changes in the JTPA summer youth program that would provide local flexibility in the provision of year-round basic and remedial education to youths in AFDC families, under the JTPA summer youth program; and

WHEREAS, the Administration's proposal would change the distribution formula so that funds are redirected away from rural areas to urban areas, despite the continued presence of large numbers of poor youth with acute literacy problems throughout rural American who would benefit from year-round and summer youth training and employment program services; and

WHEREAS, the current program mix of work experience and remedial education has proven to be effective in assisting youths in breaking the poverty cycle;

THEREFORE BE IT RESOLVED, that the National Association of Counties urges Congress to enact legislation that would provide local service delivery areas with the flexibility to provide year-round work experience and remediation services to youths in families that receive public assistance; and

BE IT FURTHER RESOLVED, that wages or allowances paid to youths participating in year-round work experience and remediation be disregarded in determining the benefit levels of families receiving public assistance such as Aid to Families with Dependent Children; and

BE IT FURTHER RESOLVED, that the National Association of Counties urges Congress to reject changes in the distribution formula that would redirect funds away from rural areas to urban areas.

Passed by the Employment Steering Committee
March 15, 1987 (unanimous)
Adopted with amendments by the Board of Directors
March 17, 1987

EMPLOYMENT STEERING COMMITTEE
RESOLUTION ON
PROPOSED CHANGES TO THE EMPLOYMENT SECURITY AND UNEMPLOYMENT COMPENSATION SYSTEMS

WHEREAS, the current administration and funding of the employment service and unemployment insurance systems are directed by the federal government and are not responsive to local needs or input; and

WHEREAS, locally controlled employment and training services provided through the public/private partnership have proven to be more responsive to the needs of local residents; and,

WHEREAS, the Administration's proposed changes in the employment security and unemployment compensation systems provide for the decentralization of administration and fiscal responsibilities to the states;

THEREFORE BE IT RESOLVED, that the National Association of Counties supports the decentralization of administrative responsibilities to the states but opposes the decentralization of fiscal responsibilities to the states;

BE IT FURTHER RESOLVED, that the National Association of Counties calls for modifications in the employment security system that would require local private industry councils and chief elected officials approval, and subsequent monitoring and oversight of local employment services plans and operations,

Passed by the Employment Steering Committee
March 15, 1987 (unanimous)

EMPLOYMENT STEERING COMMITTEE
RESOLUTION ON
PROPOSED AMENDMENTS TO JTPA TO PROVIDE INCENTIVE BONUSES FOR THE SUCCESSFUL PLACEMENT OF LONG-TERM AND POTENTIALLY LONG-TERM WELFARE CLIENTS

WHEREAS, the National Association of Counties recognizes the need to assist all dependent individuals to acquire the education, training, life skills and job placements that they need to become self-sufficient; and

WHEREAS, recent studies indicate that the majority of dependent individuals receive public assistance for less than two years, while approximately 25 percent of dependent individuals receive public assistance for nine or more years and account for an estimated 60 percent of the costs; and

WHEREAS, the provision of job training and job placement assistance to assist long-term and potentially long-term dependent individuals in making the transition from dependency to self-sufficiency in the shortest time necessary, would not only help them to become productive citizens but result in a significant cost savings; and

WHEREAS, the Job Training Partnership Act is designed and is currently being used to assist a variety of economically disadvantaged individuals in local communities who are in need of employment and training services; and

WHEREAS, the service delivery system established under the Job Training Partnership Act is capable of providing services to long-term and potentially long-term dependent individuals; and

WHEREAS, adjustments to the existing JTPA performance standards could increase incentives for states and service delivery areas to provide more services;

THEREFORE BE IT RESOLVED, that the National Association of Counties supports the use of incentive bonuses to increase job placements for long-term and potentially long-term dependent individuals provided that:

1. any start up for operations costs for new initiatives are supported with additional federal funds;

2. the incentive payments are required to be passed through to the JTPA service delivery areas based on placements;

3. service delivery areas are permitted to use at least 15 percent of the incentive funds for administrative costs; and

4. a feasible participant tracking and reporting system can be established;

BE IT FURTHER RESOLVED, that the National Association of Counties urges Congress to oppose amendments that would impose limitations on the carryover of JTPA six percent incentive grants and other discretionary funds of the governor under Title II-A; and

BE IT FURTHER RESOLVED, that the existing JTPA performance standards be modified to accurately reflect the true costs and expected placement rates for long-term and potentially long-term dependent individuals.

Passed by the Employment Steering Committee
March 15, 1987 (unanimous)

National Governors' Association

Bill Clinton
Governor of Arkansas
Chairman

Raymond C. Scheppach
Executive Director

March 24, 1987

The Honorable Paul Simon
United States Senate
462 Dirksen Senate Office Building
Washington, D.C. 20510-1302

Dear Senator Simon:

Enclosed is a final interim report on state Job Training Partnership Act (JTPA) expenditures prepared by the National Governors' Association. The report summarizes the expenditure data collected from the states and displays that data in a variety of ways you will find useful. The final report, which will include more descriptive information about state operated programs, will be available later this spring.

I hope this information will assist you in your deliberations over various JTPA expenditure proposals. The interim report contains the most up-to-date information available on state JTPA expenditures. It was collected directly from states and reflects not only program year 1985, but also amendments to past years' expenditures reports.

If you have any questions, please do not hesitate to contact Carol Hedges of the National Governors' Association.

Sincerely,

Raymond C. Scheppach

Enclosure

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001-1572 · (202) 624-5300

National Governors' Association

Bill Clinton
Governor of Arkansas
Chairman

Raymond C. Scheppach
Executive Director

JTPA EXPENDITURES

Since January 1987, the National Governors' Association (NGA) has been conducting a study on expenditures of the Job Training Partnership Act (JTPA) programs. This is an interim report to briefly present some of the preliminary findings.

The first phase of this study consisted of a survey designed to obtain expenditure information for each of the JTPA programs. At this time, the NGA survey data represents 99 percent of all the JTPA funds made available to the states.

The second phase of the study, started at a later stage, consisted of a mail survey designed to understand the complexities of JTPA expenditure levels and capture reasons for the underexpenditures, combined with telephone interviews in twelve selected states. As of today, NGA has recevied 43 reponses.

The following is a summary of the preliminary findings:

o The NGA figures differ from previous figures published by the U.S. Department of Labor. Some states have submitted or are in the process of submitting adjustment to the financial reports. The NGA figures more accurately reflect current JTPA expenditure levels; the NGA figures account for approximately $64 million more in the Title II-A set-asides (22%).

o In the overall, the "system" is maturing and becoming more effecient in utilizing available resources. Expenditures have increased every year by 10 percent. Assuming this historical trend, the JTPA Title II-A carryover into Program Year 1987 will be $250 million less than the carryover into Program year 1986. (See Exhibit A.)

o JTPA Title II-A expenditures in PY 1985 were 98 percent of the new PY 1985 allocations.

o States receiving a smaller amount of funds seem to have a slightly higher expenditure rate than states receiving a larger amount of JTPA Title II-A funds. (See Table 1).

o There seems to be no relationship between the expenditure rate and performance. States with low expenditure rates have comparable entered employment rate to states with high expenditure rates.

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o By Program Year 1987, half of the states will have a reallocation policy in place; during the transition year (TY 1984) only one state had a reallocation policy and in Program Year 1985 only one in every six.

o The majority of the states have utilized their funds at satisfactory rates. The underexpenditure "problem," defined as low rate of expenditures to available funds, is concentrated in a small number of states with relatively high carryovers. Nine states accounted for over half of the overall PY 1985 Title II-A carryover.

o In PY 1985, 32 states spent their Title II-A funds at a level greater than their new PY 85 allocations, even assuming a small increase in expenditure rates, 38 states would spend more in PY 86 than their new PY 1986 allocations.

o Assuming no increase in expenditure levels, Title II-A carryover into Program Year 1987 will be approximately $635 million. Assuming a 10 percent increase in expenditures, the carryover will be $450 million and if a 15 percent increase in expenditures is assumed, the carryover will be reduced to $360 million. In order to eliminate all the carryover, the "system," as an overall, would have to expend in PY 1986 thirty-five (35) percent more than in PY 1985.

o There is a proposed legislation in Congress which would limit JTPA carryover to no more than 20 percent of a particualar year allocation. Assuming a 10 percent increase in expenditures for each state and allowing a 20 percent carryover of the PY1986 allocation, if such program would be in place by the beginning of Program Year 1987, JTPA (Title II-A 1987) available funds are to be reduced by $230 million. Approximately 30 states will not be affected by such action. A total of $150 million, however, will come from only 6 states. Even if a 15 percent increase is assumed, JTPA available funds are to be reduced by $190 million and by $120 million if a 25 percent increase in expenditures is assumed. (See Table 2 A, B & C for excess carryover by state. Table 2-A assumes a 10 percent increase in expenditures for each state, Table 2-B assumes a 15 percent increase, and Table 2-C assumes a 25 percent increase.)

o The JTPA expenditure issue is a complex one. While some states have high Title II-A (78%) program expenditure rates, they also have low expenditure rates on the Title II-A set-aside programs. On the other hands, some states have done very well utilizing these special program funds but at the same time have low Title II-A (78%) expenditure rates. Table 3 presents the national expenditure rates for each of the Title II-A programs for different program years and a summary for the period between October 1, 1983 and June 30, 1986.

o The biggest unspending area appears to be the 6 percent incentive set-asides. For the 33-month period a little over 50 percent of the funds available for purposes other than incentives for performance and the hard-to-serve were expended. Of course, states award incentive funds based on previous year performance. Table 3 adds the 6% awards for exceeding performance and the hard-to serve to the Title II-A 78% programs.

Exhibit A

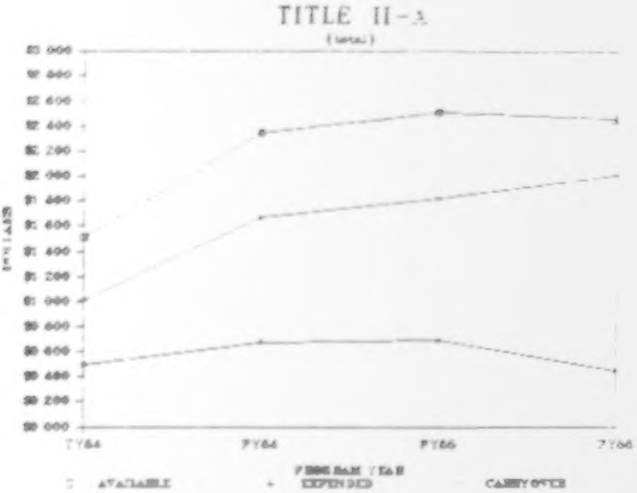
TITLE II-A
(total)
$3.000
$2.800
$2.600
$2.400
$2.200
$2.000
$1.800
$1.600
$1.400
$1.200
$1.000
$0.800
$0.600
$0.400
$0.200
$0.000
DOLLARS
FY84
FY85
FY86
FY87
PROGRAM YEAR
□ AVAILABLE
+ EXPENDED
CARRYOVER

Table 1
JTPA Expenditures

	AVAILABILITY 33 MONTHS	EXPENDITURE 33 MONTHS	CARRY-OVER at end of 33 MONTHS	EXPENDITURE RATE	AVERAGE EXP. Rate Per Quartile
California	$568,609,874	$465,426,971	$103,182,903	0.82	
New York	$358,088,511	$323,453,076	$34,635,435	0.90	
Michigan	$292,935,687	$259,504,630	$33,431,057	0.89	
Pennsylvania	$288,754,116	$242,644,433	$46,109,683	0.84	0.86
Illinois	$287,241,103	$261,455,224	$25,785,879	0.91	
Ohio	$285,999,636	$237,996,434	$48,003,202	0.83	
Texas	$259,288,775	$232,492,077	$26,796,698	0.90	
Florida	$191,527,916	$173,749,750	$17,778,166	0.91	
Puerto Rico	$179,570,787	$127,103,309	$52,467,478	0.71	
New Jersey	$138,112,421	$129,043,230	$9,069,191	0.93	
Indiana	$136,540,560	$121,486,409	$15,054,151	0.89	
Alabama	$129,447,273	$120,882,409	$8,564,864	0.93	
Tennessee	$126,679,313	$100,076,162	$26,603,151	0.79	
North Carolina	$125,359,693	$103,893,221	$21,466,472	0.83	
Wisconsin	$115,857,198	$107,715,102	$8,142,096	0.93	0.86
Kentucky	$114,076,926	$88,558,214	$25,518,712	0.78	
Louisiana	$111,922,743	$84,521,372	$27,401,371	0.76	
Washington	$111,541,284	$100,030,592	$11,510,692	0.90	
Missouri	$103,787,699	$92,835,714	$10,951,985	0.89	
Georgia	$103,124,841	$89,938,394	$13,186,447	0.87	
Massachusetts	$99,592,337	$99,142,395	$449,942	1.00	
Virginia	$88,574,480	$80,005,120	$8,569,360	0.90	
South Carolina	$79,833,904	$72,704,261	$7,129,643	0.91	
Maryland	$77,526,948	$68,976,712	$8,550,236	0.89	
Minnesota	$76,481,652	$69,595,393	$6,886,259	0.91	
Mississippi	$71,064,456	$63,359,338	$7,705,118	0.89	
Oregon	$70,755,597	$62,328,898	$8,426,699	0.88	
Arizona	$63,651,775	$51,428,981	$12,222,794	0.81	0.88
West Virginia	$61,883,075	$51,113,640	$10,769,435	0.83	
Arkansas	$55,350,487	$46,103,359	$9,247,128	0.83	
Iowa	$55,294,643	$49,727,915	$5,566,728	0.90	
Colorado	$51,492,517	$46,167,798	$5,324,719	0.90	
Oklahoma	$50,595,032	$38,938,584	$11,656,448	0.77	
Connecticut	$47,405,519	$43,632,507	$3,773,012	0.92	
Kansas	$30,710,043	$28,470,279	$2,239,764	0.93	
Utah	$26,764,714	$23,380,541	$3,384,173	0.87	
Maine	$23,450,663	$22,313,614	$1,137,049	0.95	
Idaho	$22,229,438	$20,749,008	$1,480,430	0.93	
Rhode Island	$20,699,873	$19,199,043	$1,500,830	0.93	
Nevada	$20,257,985	$17,746,528	$2,511,457	0.88	
Nebraska	$19,676,772	$18,724,673	$952,099	0.95	
Montana	$19,598,821	$18,005,235	$1,593,586	0.92	
Dist. of Col.	$18,770,554	$15,427,493	$3,343,061	0.82	0.88
Hawaii	$16,145,477	$15,607,251	$538,226	0.97	
New Hampshire *	$14,246,441	$10,855,699	$3,390,742	0.76	
Delaware	$13,307,939	$11,114,591	$2,193,348	0.84	
North Dakota	$13,232,914	$12,126,022	$1,106,892	0.92	
Wyoming	$13,152,914	$10,236,932	$2,915,982	0.78	
South Dakota	$12,969,267	$8,945,271	$4,023,996	0.69	
Vermont	$12,932,914	$10,792,940	$2,139,974	0.83	
Virgin Islands	$4,870,330	$4,053,706	$816,624	0.83	
Survey Totals	$5,280,985,837	$4,573,780,450	$707,205,387	0.87	

* Excludes part of 6% expenditures.

Table 2-A
JTPA (Title II-A) Excess Carryover
(assuming a 10 percent increase in expenditure)

	Carryover in Excess of 20% Allocation
California	$49,466,182
Puerto Rico	$48,988,444
Louisiana	$23,528,111
Pennsylvania	$23,375,557
Ohio	$14,307,536
Kentucky	$11,210,013
Tennessee	$9,376,130
Oklahoma	$9,143,802
North Carolina	$7,683,393
West Virginia	$7,214,111
Arizona	$7,061,373
Arkansas	$5,566,491
South Dakota	$3,185,328
Oregon	$2,934,833
Dist. of Col.	$2,037,858
Nevada	$1,133,902
Delaware	$1,054,116
New Hampshire *	$927,842
Wyoming	$882,233
Utah	$743,000
Vermont	$410,383
Virgin Island	$345,528
Montana	$0
Indiana	$0
Mississippi	$0
Rhode Island	$0
Alabama	$0
South Carolina	$0
Minnesota	$0
Illinois	$0
New Jersey	$0
Idaho	$0
Massachusetts	$0
Texas	$0
Maryland	$0
Hawaii	$0
Kansas	$0
Georgia	$0
Missouri	$0
Virginia	$0
Michigan	$0
Washington	$0
North Dakota	$0
Florida	$0
Iowa	$0
Wisconsin	$0
New York	$0
Nebraska	$0
Maine	$0
Connecticut	$0
Colorado	$0
TOTAL	$230,576,166

* Excludes part of 6% expenditures.

Table 2-8
JTPA (Title II-A) Excess Carryover*
(assuming a 15 percent increase in expenditures)

	Carryover in Excess of 20% Allocation
Puerto Rico	$46,234,118
California	$40,130,049
Louisiana	$21,628,429
Pennsylvania	$18,784,966
Ohio	$9,457,794
Kentucky	$9,340,779
Oklahoma	$8,224,655
Tennessee	$7,120,855
Arizona	$6,156,484
West Virginia	$6,151,668
North Carolina	$5,685,866
Arkansas	$4,646,270
South Dakota	$2,985,538
Dist. of Col.	$1,740,834
Oregon	$1,722,044
Delaware	$840,664
Nevada	$814,434
New Hampshire *	$654,223
Wyoming	$628,121
Utah	$288,619
Virgin Island	$267,377
Vermont	$170,097
Montana	$0
Indiana	$0
Minnesota	$0
Illinois	$0
Missouri	$0
Rhode Island	$0
Nebraska	$0
South Carolina	$0
Massachusetts	$0
Idaho	$0
New York	$0
Hawaii	$0
North Dakota	$0
Texas	$0
Kansas	$0
Georgia	$0
Mississippi	$0
Florida	$0
Michigan	$0
Virginia	$0
Maryland	$0
Washington	$0
Iowa	$0
Connecticut	$0
New Jersey	$0
Alabama	$0
Maine	$0
Wisconsin	$0
Colorado	$0
TOTAL	$193,673,884

Table 2-C
JTPA (Title II-A) Excess Carryover*
(assuming a 25 percent increase in expenditures)

	Carryover in Excess of 20% Allocation
Puerto Rico	$40,725,466
California	$21,457,783
Louisiana	$17,829,065
Pennsylvania	$9,603,784
Oklahoma	$6,386,361
Kentucky	$5,602,311
Arizona	$4,346,706
West Virginia	$4,026,782
Arkansas	$2,805,828
Tennessee	$2,610,305
South Dakota	$2,585,958
North Carolina	$1,690,812
Dist. of Col.	$1,146,786
Delaware	$413,760
Nevada	$175,498
Wyoming	$119,987
Virgin Island	$111,075
New Hampshire *	$106,985
Ohio	$0
Oregon	$0
Utah	$0
Vermont	$0
Montana	$0
Indiana	$0
Minnesota	$0
Illinois	$0
Missouri	$0
Rhode Island	$0
Nebraska	$0
South Carolina	$0
Massachusetts	$0
Idaho	$0
New York	$0
Hawaii	$0
North Dakota	$0
Texas	$0
Kansas	$0
Georgia	$0
Mississippi	$0
Florida	$0
Michigan	$0
Virginia	$0
Maryland	$0
Washington	$0
Iowa	$0
Connecticut	$0
New Jersey	$0
Alabama	$0
Maine	$0
Wisconsin	$0
Colorado	$0
TOTAL	$121,745,162

Table 3

US TOTALS
NGA State Survey of Expenditure Levels

		TRANSITION YEAR 1984		PROGRAM YEAR 1984		PROGRAM YEAR 1985		YEAR-TO-DATE 33 MONTHS		YTD FEDERAL REPORTS	
78% FUNDS	CARRYIN	120,739,160		350,248,577		464,569,753		120,739,160			
	ALLOTMENT	1,082,846,726		1,444,059,523		1,436,528,771		3,964,468,020			
	6% AWARD	8,027,090		52,038,007		64,739,465		124,804,563			
	AVAILABLE	1,211,612,976		1,846,346,107		1,965,837,989		4,208,978,743			
	EXPENDED	861,364,399	71.1%	1,381,776,354	74.8%	1,519,504,194	77.3%	3,762,644,947	89.4%		
	CARRYOUT	350,248,577		464,569,753		446,333,795		446,333,796			
6% FUNDS	CARRYIN	0		50,756,983		69,730,280		0			
	ALLOTMENT	83,735,406		110,314,938		109,025,919		303,076,263			
	6% AWARD	(8,027,090)		(52,038,008)		(64,739,465)		(124,804,563)			
	AVAILABLE	75,708,316		109,033,913		114,016,734		178,271,700			
	EXPENDED	24,951,333	32.6%	39,303,633	36.0%	34,057,767	30.0%	98,312,733	55.1%		
	CARRYOUT	50,756,983		69,730,280		79,958,967		79,958,967			
8% FUNDS	CARRYIN	0		52,551,910		71,682,153		0			
	ALLOTMENT	111,608,972		147,995,312		146,726,285		406,330,569			
	AVAILABLE	111,608,972		200,547,222		218,408,438		406,330,569			
	EXPENDED	59,057,062	52.9%	128,865,069	64.3%	134,713,394	61.7%	322,635,525	79.4%		
	CARRYOUT	52,551,910		71,682,153		83,695,044		83,695,044			
3% FUNDS	CARRYIN	0		29,546,650		46,845,982		0			
	ALLOTMENT	41,853,364		55,484,712		54,866,951		152,205,027			
	AVAILABLE	41,853,364		85,031,362		101,712,933		152,205,027			
	EXPENDED	12,306,714	29.4%	38,185,380	44.9%	52,313,211	51.4%	102,805,305	67.5%		
	CARRYOUT	29,546,650		46,845,982		49,399,722		49,399,722			
5% FUNDS	CARRYIN	0		17,384,379		24,571,130		0			
	ALLOTMENT	70,655,608		92,497,070		91,756,749		254,909,422			
	AVAILABLE	70,655,608		109,881,449		116,327,879		254,909,422			
	EXPENDED	53,271,239	75.4%	85,310,319	77.6%	85,488,359	73.5%	224,069,902	87.9%		
	CARRYOUT	17,384,379		24,571,130		30,839,520		30,839,519			
TOTAL FUNDS	CARRYIN			500,488,493		677,379,290		120,739,160		120,739,160	
	ALLOTMENT			1,850,351,587		1,839,724,670		5,080,981,300		5,080,981,300	
	AVAILABLE	1,511,639,235		2,350,840,080		2,517,103,960		5,201,715,460		5,201,715,460	
	EXPENDED	1,011,150,742	66.9%	1,673,460,790	71.3%	1,826,876,920	72.6%	4,511,488,412	86.7%	4,448,128,322	85.5%
	CARRYOUT	500,488,493		677,379,290		690,227,040		690,227,048		753,587,138	

STATEMENT OF HUBERT H. HUMPHREY, III MINNESOTA ATTORNEY GENERAL IN SUPPORT OF THE ECONOMIC DISLOCATION AND WORKER ADJUSTMENT ASSISTANCE ACT

S. 538

March 24, 1987

Thank you, Chairman Simon and members of the Senate Subcommittee on Employment and Productivity, for the opportunity to submit a written statement in support of S. 538, the Economic Dislocation and Worker Adjustment Assistance Act. Together with Senator Metzenbaum, Senator Kennedy, and this bill's numerous co-sponsors in the Senate and the House, it is my hope that Congress will act quickly to enact this proposal into law.

The plant closing and mass layoff problem seems to be getting more severe every year. According to a new report from the U.S. Department of Labor, fully 35 percent of the unemployed in 1986 were people thrown out of work by plant closings, long-term business slumps or other permanent dismissals. In 1985, the Bureau of Labor Statistics found that 11.5 million workers lost their jobs during the five years between January 1979 and January 1984 because of plant shutdowns, the moving of plants or companies, slack work, or the abolition of a position or a shift. Almost half of those workers had had at least three years on the job before they were permanently laid off.

The Conference Board's 1986 survey of 512 U.S. companies found that 44 percent had closed at least one plant between 1982 and 1985. Nearly three out of five of the firms surveyed experienced either substantial layoffs or closures during that same three-year period. More than three-fourths of the firms in the manufacturing sector and nearly half of the firms in the service sector reported job cutbacks and closures.

Minnesota has not been immune. Although the Twin Cities metropolitan area economy has been fairly strong, outstate Minnesota and the industrial core of our cities have been severely affected by economic dislocation. Attached to this statement is a partial list of some of the major plant closings and mass layoffs in Minnesota since the end of the recession in 1983. As you can see, even though our unemployment rate is under the national average, thousands of Minnesotans have in recent years lost their jobs because of plant shutdowns or the moving of a plant or company.

The impact on some of our Minnesota communities has been devastating. I have traveled a number of times to the Reserve Mining towns of Silver Bay and Babbitt on Minnesota's Iron Range and I have talked with the people affected. Many, if not most of the laid-off employees have spent their entire working lives at Reserve, most of them are 40 years of age or older, and they do not know where to turn. They have lost their jobs, their income, their insurance, and soon, I am sure, they will face the loss of their homes as well.

If the Minnesota pattern follows the national pattern, we can sadly expect most of these families to suffer severe financial hardship. The study published by the Public Research Institute of the Center for Naval Analysis found that, while workers under 40 experienced a 13.4 percent drop in average earnings in the year after a plant closure, workers over 40 suffered a 39.9 percent reduction. Louis Jacobson's study of plant closings in the steel, meat packing, automobile, and aerospace industries found that, even after six years, the average worker will still earn 12 to 18 percent less than he or she did before the shutdown. The 1985 report on unemployed New England auto workers by Boston College's Social Welfare Institute found that the average length of each auto workers' longest layoff period was 66 weeks, with one in five unemployed for two years or more. Seventy-five percent looked for work during their layoff, but only 21 percent were able to find jobs. Forty-three percent of those workers used up all their savings while unemployed, 23 percent missed mortgage or rent payments, and one out of four lost all family health insurance.

The "ripple effect" of plant closings can be almost as devastating. As Joseph Cipparone explained in the University of Michigan Journal of Law Reform:

> The community suffers, too. Local businesses lose profits because they depend on the plant or its workers to buy their goods and services. Their lost profits in turn cause more lost jobs. As people leave to find work elsewhere, property values decline. All of these events--workers being laid off, the plant closing, the local businesses losing profits, the property values declining--cause the community's tax revenues to decline. The lost revenues, plus the increased public expenditures for terminated workers, lead to increased tax rates or reduced public services for all community residents. Moreover, the community may lose the spirit that holds it together.
>
> Revenues decrease at the state level because workers and local businesses have lower taxable incomes while the closed business pays no taxes whatsoever. Concurrently, the state increases expenditures for unemployment compensation and public assistance. Though the effect on the average state citizen in no way compares to the effect on the plant workers and their community, some citizens outside the community also suffer from the cutback of many worthwhile services.

The human cost can be staggering. As more and more medical evidence indicates, plant closings and permanent mass layoffs can kill people. Congress has for years heard testimony about how the stress following plant closings has led to increased uric acid, blood pressure, blood sugar, and cholesterol levels among the workers affected, and how doctors have found weight loss, hypertension, ulcers, alcoholism, and increased incidences of diabetes, gout, hyperallergic reactions, and respiratory disorders in dislocated workers and their families. One case study of a brewery closing found the mortality rate for the displaced workers was 16 times greater than the comparable rate for males having the same age distribution. Perhaps the most frightening statistic is the finding of Dr. Sidney Cobb and Dr. Stanislav Kasl that plant closing victims have a suicide rate 30 times greater than normal.

By now, these statistics should be familiar to members of Congress. Both the House and the Senate have struggled with the plant closing issue for well over a decade, and there have been innumerable hearings documenting the seriousness of the problem. For maybe the first time, however, there seems to be a bipartisan consensus that the federal government must act and act quickly to alleviate the economic and human costs of plant closings and mass layoffs. The Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation has done, I think, an admirable job of trying to build that consensus, and I hope their work translates into effective legislation.

There is no question in my mind that the key to success is mandatory advance notice and consultation, and I strongly support Title II of the bill as proposed. As the Task Force concluded, "advance notification is an essential component of a successful adjustment program." The Conference Board's survey agreed that "advance notice is beneficial to employees and is an essential element in a plant-closure program," while the Office of Technology Assessment's report reiterated the 1966 conclusion of George P. Shulty and Arnold R. Weber that "advance notice of major employee displacement to the workers, the union, and the appropriate government and community agencies is a procedural prerequisite for constructive action."

When there is early warning of a plant closing or a mass layoff, the workers that are to be displaced are more likely to participate in adjustment projects, there is greater opportunity for in-plant labor and management participation and cooperation, and there is time to explore all possible ways of avoiding the plant closing and mass layoff. Recent history is replete with success stories from companies who, either voluntarily or through collective bargaining agreements, have taken the necessary steps to provide advance notice, consultation, and worker adjustment assistance. Corporations such as Ford, Chrysler, Xerox, Brown & Williamson, Dana, Kelsey-Hayes, Electrolux, Levi-Strauss, and Bethelehem Steel have established standards that the rest of corporate America should emulate.

In Minnesota, advance notice has been crucial and clearly beneficial. When Wilson Foods filed for bankruptcy under chapter 11 in April, 1983, their Albert Lea meatpacking plant was set to be closed, throwing some 1900 hourly and salaried employees out of work. The United Food and Commercial Workers (UFCW) had, however, negotiated a six-month plant closing notice requirement into their collective bargaining agreement, and that gave community, government, and labor leaders the time they needed to find a buyer for the plant. The new owner, Farmstead Foods, is now in the process of completing an $8-10 million modernization project on the Albert Lea plant, and the dislocation has been minimized. Although Farmstead is not out of the woods yet, there is hope for the Albert Lea community that would not have existed if the plant had been permanently closed.

That kind of example has convinced most business, labor, and government leaders that advance notice and consultation is desirable. The controversy is over whether to make advance notice and consultation mandatory.

The statistics, unfortunately, bear out the necessity for imposing strong sanctions on companies that do not provide the motive required if worker adjustment efforts are to be successful. The recent General Accounting Office study of larger establishments (100 or more employees) reported that only 18 percent gave more than 90 days' notice of plant closings and mass layoffs. Twelve percent gave no notice at all; 30 percent gave at least some of their workers 1 to 14 days' notice; 40 percent gave 14 to 90 days' notice. The bottom line, however, is that nearly two-thirds of the plants shut down give their individual workers less than two weeks' notice. According to the GAO report, the typical establishment with over 100 workers announces that job losses will occur more than 2 weeks before the occurrence, but gives specific notice to individual workers about 1 week in advance for blue-collar workers and 2 weeks in advance to white-collar workers.

That simply is not good enough in most cases. Title II of this bill properly requires more notice depending on the number of employees affected. If employers fail to provide the required notice, they will be liable to the affected employees for the wages and benefits that would have been received for each day of violation. If, for some reason, advance notice cannot be given, the bill provides an exception for cases of unforseeable business necessity.

This system guarantees that, if the necessary notice is not provided, the "penalty" will go to the employees affected. Compared to the Reagan Administration's proposal to give employers an unemployment tax credit if they provide advance notice, this bill creates a much fairer and more precisely targeted system of penalties and incentives to assure compliance.

Besides mandatory advance notice and consultation, the key to successful worker adjustment programs is coordination. In Minnesota, we have done our best to coordinate the various job assistance programs, but the effort has not been entirely successful. The 1985 Jobs Bill replaced an old Department of Economic Security with a new Department of Jobs and Training with border responsibilities for linking employment and training programs with income maintenance programs. That bill also created a new Office of Full Productivity and Opportunity with the responsibility for developing an overall strategy for more effectively utilizing state, federal, local, and private resources.

Despite those changes, the Program Evaluation Division of our Legislative Auditor's Office reported just this month that employment and training resources are too often concentrated and directed at people who are more job-ready and often fail to reach the more disadvantaged. The Auditor's report also found that coordination among programs was limited because different programs have different geographic boundaries and different legal authorization. Not only do individual programs fail to refer clients to other programs with more appropriate services, but, in some cases, they actually compete with each other for scarce resources.

This bill would go a long ways toward solving that problem. The creation of identifiable state dislocated worker units with the statutory authority "to coordinate and facilitate all resources available to the State for displaced workers" including the Job Service and the unemployment insurance system will, I hope, help eliminate much of the unnecessary duplication or competition among the various employment and training programs. Further, the requirement that states develop written plans to assure that the goals of the program are met, upon penalty of losing part of their funding, and the provisions for federal monitoring will make it much more likely that the Dislocated Workers Units will do their jobs well and spend their funds wisely.

Overall, I believe this bill will go far to reduce the financial and human costs of plant closings and mass layoffs, and will assure that there is help available for those left behind in our dynamic economy. I urge swift passage.

PARTIAL LISTING
PLANT CLOSINGS, MASS LAYOFFS IN MINNESOTA SINCE 1983

COMPANY	CITY	NUMBER OF EMPLOYEES AFFECTED
Reserve Mining	Silver Bay/Babbitt	1,100
Whirlpool	St. Paul	900
Sperry	Eagan	900
Montgomery Wards	St. Paul	900
Conwed/USG	Cloquet	700*
American Hoist	St. Paul	500
Boise Cascade	International Falls	450
Brockway Glass	Rosemount	450
Litton Industries	Plymouth	450
Butler Taconite	Nashwauk	450
Murphy Motor Freight	Roseville	300
Landy Packing	St. Cloud	300
PAKO	Golden Valley	250
Medallion Kitchens	Fergus Falls	250
Donaldson Company	Eagan	250
Iowa Pork (2)	South St. Paul Buffalo Lake	200 125
Northrup King	Minneapolis	175
Leamington Hotel	Minneapolis	175
McLean Trucking	New Brighton	125
KP Manufacturing	Minneapolis	125

COMPANY	CITY	NUMBER OF EMPLOYEES AFFECTED
Land-O-Lakes	Aitkin	125
AT & T	Roseville	120
Twin City Fan & Blower	Minneapolis	120
Colwell North Central	St. Paul	120

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* Approximately 700 Conwed workers lost their jobs when USG Corp. took over. As of 9/15/85, only 83 former Conwed workers had been hired back, out of a total of 340 new hires.

Opening the Self-Employment Option

Testimony of

Robert E. Friedman, President
Corporation for Enterprise Development

before the

Subcommittee on Employment and Productivity
and the
Subcommittee on Labor

of the

Committee on Labor and Human Resources

of the

United States Senate

March 26, 1987

I am Robert Friedman, President of the Corporation for Enterprise Development (CfED), a non-profit organization which has worked for eight years with state and local policymakers, private corporations, unions and community organizations to design and implement effective economic development strategies, particularly in chronically poor communities and communities hard hit by plant closings.

I am very pleased to be able to testify today in support of the Self-Employment Opportunity Demonstration Program provision of the Economic Dislocation and Worker Adjustment Assistance Act, S. 538. The nation has long needed the kind of comprehensive economic dislocation program offered in this legislation. The proposed legislation is notable not only for bringing together programs of demonstrated effectiveness in dealing with the challenges of dislocation, but also for its commitment to exploring the new approaches detailed in the demonstration provisions.

I will focus my remarks on the self-employment provisions of the bill, but want to acknowledge at the outset that efforts to promote self-employment as a response to dislocation constitute only part of an adequate response to the challenge of economic restructuring and dislocation: different dislocated workers and communities will escape unemployment through different routes; it is our job to open as many of those routes as possible.

I have divided my testimony into five sections:

1. Why Open a Self-Employment Option?
2. Entrepreneurship, Self-Employment and Economic Renewal
3. Barriers to Self-Employment
4. Precedents and Program Models
5. The Provisions of S.538

1. Why Open a Self-Employment Option?

In many of the communities of this country hardest hit by international competition and economic restructuring -- from timber communities of the Northwest to the textile-mill towns of the Southeast, from the mining communities of the Southwest to the steel communities of New England, from the automobile communities of the Midwest to the farming communities of the Plains -- the underlying problem is a loss of jobs and enterprise. When the best of traditional remedies run their course -- when the advance notice period has expired, when severance pay and unemployment compensation have been exhausted, when counselling and placement assistance has ended, when retraining has been completed, when what few people who are willing to move have moved -- many dislocated workers will still face the reality that there are not sufficient job opportunities to absorb them. For these individuals -- and for these communities -- part of the challenge of economic change is to sow the seeds of a new economy, to create enterprises which can grow to replace the jobs and enterprises that have been lost. And one of the sources of this new growth will be the unemployed themselves.

2. Entrepreneurship, Self-Employment and Economic Renewal

Indeed, what is remarkable about the last decade of rapid restructuring of the American economy is not only the dramatic loss of plants and jobs, but the rise of entrepreneurship in the face of dislocation. The increasing role of entrepreneurship in this economy -- the 65 percent rise in business incorporations and the 45 percent rise in self-employment from 1970 to 1984[1] -- is a response both to new opportunities, and dislocation. The best evidence that we have is that 1/2 of new jobs generated over the last decade and a half have come from independent firms under

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[1] U.S. Small Business Administration The State of Small Business (Washington, D.C.: U.S. Government Printing Office, 1984, 1985, 1986).

5 years of age.[2] Moreover, triggers for entrepreneurship are more often negative than positive -- loss of a job, loss of a spouse, being caught in a dead-end job.[3] Many entrepreneurs are entrepreneurs of necessity.

What distinguishes "dislocated communities" from others is not the fact that firms are dying or plants are closing, but rather the speed and scale of the losses, relative to the existing enterprise and job base. But even in these communities there is evidence of renewal. In Europe:

- o Since its formation in 1975, BSC Industry, a wholly-owned subsidiary of British Steel Corporation devoted to creating jobs in steel closure areas, has helped more than 2,000 firms start or grow, creating 30,000 new jobs with another 20,000 projected. Although the number of jobs replaced makes up for only a portion of those lost, and the jobs created will many times not go to the former British Steel Corporation employees, still BSI has set up a visible process for renewal in communities that saw their major employer shut down. In cities like Corby, this process has already succeeded in replacing half of the jobs lost and quintupling the number of business in existence.[4]

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[2] Birch, Job Generation Process; Catherine Armington and Marjorie Odle, "Sources of Employment Growth" (Paper delivered at the Second Annual Small Business Research Conference, Waltham, MA, 11-12 March ;1982), pp.5-6; Michael B. Tertz, Small Business and Employment Growth in California (Berkeley: University of California, Institute of Urban and Regional Development, 1981).

[3] Albert Shapero, "The Social Dimensions of Entrepreneurship," in Encyclopedia of Entrepreneurship by Donald L. Sexton, et al. (Englewood Cliffs, NJ: Prentice-Hall, 1982), p.82.

[4] William Schweke and Rodney Stares, Sowing the Seeds of Economic Renewal (Washington, DC: Corporation for Enterprise Development, 1986).

- In Landeskrona, Sweden, 65 percent of the jobs lost in the shipbuilding industry decline have been replaced by start-ups of new firms.[5]

- Though much of the loss of employment in firms has occurred in manufacturing, in north-central Italy there is more manufacturing employment today than there was 15 years ago, but it takes a very new form. There, half a million firms with average employment of five employees, each, managed in many cases by former factory hands, employ the latest computer technology and join together in flexible networks to provide specialized products. Of the total number of firms, 60 percent are in manufacturing, and firms in similar lines of work tend to cluster in the same geographic areas so that they are knowledgeable about what complementary firms exist: Bologna specializes in machine tools; Carpa in knitware; Prato in metal working.[6]

There is U.S. evidence of the possibilities as well:

- Entrepreneurial renewal has had its clearest impact in the six northeastern states of New England, where the unemployment rate has declined from 12 percent in 1974 to 4.5 percent in 1985. New England lost 252,000 manufacturing jobs between 1968 and 1975, but replaced most of them -- 225,00 -- in the ensuing five years.[7]

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[5] Ibid.

[6] Richard Hatch, "Reviving Local Manufacturing Italian Style," City Limits (April, 1986), pp.16-19.

[7] James M. Howell and Linda D. Frankel, "Economic Revitalization and Job Creation in America's Oldest Industrialized Region" (Unpublished remarks at the American Enterprise Institute, Washington, DC, 2 December 1985), p.1. See also Gary Gappert, ed., Winter Cities (Beverly Hills, CA: Sage, 1986).

- Researcher Candee Harris, studying job loss and job replacement, found that during the last recession:
  - An employee was less likely to lose a job if he or she was employed in a firm employing under 100 employees than one employing over 100.
  - While larger firms lost net employment, small firms continued to gain; that is, small firms were countercyclical in their job creation performance.
  - The small business contribution to job generation and job stability was greatest precisely in those industrial sectors and those regions that underwent the greatest decline.[8]

Indeed, without any support, 7.7 percent of workers displaced in 1979 who had become reemployed by 1984 created jobs for themselves. In industries like finance and services, construction, and utilities the rate exceeded 11 percent.[9]

Self-employment is most often seen as the lowest cut on the size spectrum. But it can also be seen as the first step in the evolution of enterprise, the foundation of an entrepreneurial culture -- important not only for the jobs and income that directly result, but also for the effect on neighbors and friends and children who will be encouraged to start businesses as a result.

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[8] Candee S. Harris, "The Magnitude of Job Loss from Plant Closings and the Generation of Replacement Jobs: Some Recent Evidence," The Annals of the American Academy of Political and Social Science, 475:15-27 (September 1984).

[9] Alternative Uses of Unemployment Compensation (Washington, DC: U.S. Department of Labor, March 17, 1986), p.57.

We know that a primary cause for entrepreneurship is having a parent or relative who started a business; that phenomenon ought to work prospectively as well.

There is, of course, a down-side to self-employment and entrepreneurship. The two most frequently mentioned are failure rates and quality of jobs.

Indeed, the failure rate of young and small businesses is high, though not nearly as high as commonly assumed. The best data we have on small business failure rates comes from Dun and Bradstreet and suggest that less than 1/2 percent of all businesses die each year with loss to creditors. Of the 50,000 or 60,000 businesses that failed each of the last several years, 80 percent survived their first two years. The big failure rate years are years three, four, and five, when roughly 15 percent of those that fail, fail, so that of those that fail, 60 percent fail within five years. Thereafter the failure rate drops rapidly, but by the end of 10 years, 81 percent of all businesses have failed.

A much larger number of businesses close without loss to creditors; they may entail some personal loss or they may simply reflect the desire to do something else, or even to start a higher-value-added business. Our data on such closures are even poorer, but the best estimates are that 7 to 8 percent of all businesses close each year. We suspect that their age of distribution is similar to their failures distribution, that is, that most will survive their first two years and that the big failure-rate years will be three, four, and five.[10]

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[10] See Kibre Dawit and Robert Friedman, "Myths of Small Business Failure," Entrepreneurial Economy, 1:1 (July 1982).

It is important not to give excessive attention to the failure and closure rates. However, as David Birch has pointed out, the difference between growing and declining areas of this country is not the job loss rates, which are remarkably constant at about 8 percent a year, but rather the job creation and firm formation rates.[11]

Job quality in young and small business is often low. If one compares self-employment wages and benefits to comparable jobs in larger firms, then it looks like they pay about 70 percent as much as their larger counterparts and often fewer benefits.[12] But for many people, self-employment is an alternative NOT to employment in a large firm, but unemployment. A study recently completed by the Wisconsin Department of Development using U.S. Census data found that one's chances of making more than $8,000 was virtually the same through self-employment as through wage and salary employment (77.9% versus 80.4%). As the dollar threshold goes up, the likelihood of exceeding it is actually greater through self-employment than through wage and salary employment.[13] Moreover, different benefit and support structures could improve the performance.

3. Barriers to Self-Employment

That a significant number of dislocated workers choose self-employment is testimony to desire and necessity, not ease. Significant barriers to self-employment confront any dislocated worker choosing this option. Four types of barriers seem particularly significant:

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[11] David Birch, Op cit.
[12] U.S. Small Business Administration, Op cit.
[13] Expanding Self-Employment Opportunities in the Great Lakes Region (Madison, WI: Wisconsin Department of Development, 1987).

1. Cultural Support: The conventional view of an entrepreneur is that of a white male engineer in his mid-thirties starting a high-tech business backed by venture capital. This is not an accurate description of the 600,000 to 1 million Americans who will start businesses this year, nor is it an accurate description of all the people who could start businesses. But it is a powerful disincentive to people who do not fit the stereotypes, and to those who must lend support -- financiers, accountants, lawyers, trade associations. In a community where son has followed father to work in the same plant for generations, the idea that he might work for himself is one that needs some nurturing.

2. Financing: this country relies on an informal system of personal savings and savings of friends, family, and associates to provide those small amounts of seed money with which an entrepreneur translates a vague idea into an actual business. While this is a financing system that works remarkably well on the whole, and probably dwarfs the venture capital industry in size, it is a financing system that does not work as well in low-income communities, or in communities hard hit by plant closings. Banks are also often unlikely to meet the financing needs of growing businesses. It is significant that in a survey of its membership, the National Federation of Independent Business found that by and large small businesses felt their credit needs were being met quite well by the banking industry; the small percentage who said their needs were not being met were, however, precisely those businesses that were growing -- whose capital needs this year were different from their capital needs last year.

3. Entrepreneurial Skills: People who want to and could start businesses are often unable to do so successfully because they lack the skills necessary to start a business -- and access to the training that might provide them with those skills.

4. Policy Barriers: The unemployment compensation system itself sets up barriers to self-employment. In fact, in most U.S. jurisdictions the only thing an unemployed person can do safely without jeopardizing his or her receipt of unemployment compensation is to search for a comparable job -- however unlikely its emergence. The dislocated worker who tries to start a business becomes ineligible for benefits since he or she is no longer ready, available and searching for work.

4. Precedents and Program Models

Until recently, European countries, like the U.S., penalized unemployed workers for pursuing self-employment. But in the last eight years nine European countries (Britain, France, Belgium, Ireland, Spain, The Netherlands, Denmark, Sweden), Australia, and Canada have moved to remove such disincentives and otherwise encourage and enable self-employment. Great Britain and France have the most extensive programs.

France's "Chomeurs Createurs d'Enterprises"

The first and most extensive use of transfer payments as a form of self-employment capital is France's "Chomeurs Createurs d'Enterprises" (unemployed entrepreneurs) program, introduced on an experimental basis in 1979 and made national policy one year later. Today French citizens entitled to unemployment compensation or welfare can collect up to 43,000 FF (around $6,500) in a lump sum to start a business. This can increase to as much as

50,000 FF if the entrepreneur creates an additional job within six months. Program participants also receive social welfare coverage (health, maternity, accident, disability, life insurance) while in the program. Since its initiation, approximately 175,000 French citizens have opted for the scheme.

Enterprises begun under the program span the range from high technology manufacturing to janitorial services. Evaluations of 24,606 businesses started during 1981 and 1982 found that: between 60 and 80 percent of the businesses survived at least one year and that of those entrepreneurs whose businesses closed, more than half had either found a new job or started a second business. The average lump sum benefit was equivalent to $2,467 (1982/1983) with which 30 percent of the beneficiaries were able to leverage additional bank loans. On average, the participants created two jobs each (their own plus one). Twenty percent had no post-secondary school diploma and their average previous duration of unemployment was 7 months. 50.7 percent of recipients said they would not have started their business but for the program; an additional 25.8 percent doubted whether they would have otherwise. Remarkably, over a third of all businesses formed in France last year were financed in part under the scheme.

Britain's Enterprise Allowance Scheme

Great Britain's Enterprise Allowance Scheme (EAS) takes a different tack by supplying people with weekly benefits equivalent to average UI benefits while they attempt their business start-up. Since 1982, almost 200,000 people have started up enterprises through EAS and the scheme has subsequently been copied by Ireland, the Netherlands, and Sweden.

The U.K.'s program was premised on the belief that some unemployed people would start their own businesses if they weren't threatened with the loss of their jobless benefits. The government also believed that by virtue of the scheme, some underground business activity would come above ground, pay taxes and expand. The EAS, operated by the central government's Manpower Services Commission (MSC), pays "unemployed entrepreneurs" a uniform 40 Pounds ($60) a week for up to a year to supplement the receipts of their enterprises until they can establish themselves. Other programs also provide access to a wide range of free business training and counseling services.

To be eligible, the entrepreneur must meet all the following conditions: be receiving unemployment or supplementary (the British equivalent of welfare) benefits, have been unemployed for at least 18 weeks (13 weeks until April 1986) before applying, have at least 1000 Pounds ($1,500) available to be drawn upon, be between 18 and normal retirement age, and have a legal business in mind.

Interested applicants first attend a "scaring-off" session, originally only two hours but now a full day, where they meet with job counselors, tax experts, accountants and lawyers, and are informed of the risks and difficulties involved in starting a business and, recently, of sources of assistance. Those who want to go on fill out a simple form with very little red tape.

The scheme began in five pilot areas in early 1982. One year later, more than 2,000 people were participating, and the government agreed to extend it nationwide, with a ceiling of 25,000 entrepreneurs through March 1984. By November 1983, with entrants joining the EAS at a rate of 800 a week, the annual target for 1983/84 had already been exceeded and was raised to 35,000. In April 1984, the target was raised yet again to more than 50,000 places a year. Demand remained unsatisfied and in

November 1984, a target of 65,000 was announced. Again to meet demand, the 1986/87 target was set at 86,000 new entrants and the 1987/88 target at 100,000. Overall, about two percent of Britain's eligible unemployed have chosen the self-employment option.

Although it is too early to obtain definitive figures on the national scheme, recent studies show that of the firms begun during the EAS pilot phase, 52 percent were still trading 3 years after start-up. Surveys of the nationwide program also suggest that each surviving enterprise has created an average of 1.5 jobs.

Overall, about 40 percent of the EAS participants say they would not have started an enterprise without the scheme; another 30 percent say they would not have started one as soon; 70 percent said they would probably have failed without the EAS assistance. Twenty-eight percent of EAS participants take a cut in income to enter the scheme. During the first 9 months, income levels of participants are substantially below the national average, but exceed it after 18 months.

The MSC estimates the net cost per net new job created through the scheme (discounting for business closures, businesses that would have been started anyway and displacement of existing businesses) is 2,690 Pounds ($4,000) during the first year. Additional tax revenues and cost savings in the second year reduce the net cost to 665 Pounds ($995); by the end of the third year, MSC estimates the Exchequer actually makes money through the scheme.

U.S. Experience

During the last several years, there has been growing local and state experimentation in the U.S. with promoting self-employment and entrepreneurship among dislocated workers.

Several states and Private Industry Councils have used JTPA money to fund entrepreneurial training programs. Ohio, for example, has used $550,000 in JTPA Title III funds to train 217 dislocated workers to start businesses. State vocational education systems, community colleges and universities have also provided such training.

Some states, localities, and private agencies have established seed capital and revolving loan funds. But the experience to date in this country has been piecemeal and inconsistent.

5. The Provisions of S538

The Self-Employment Opportunity Demonstration Program of the Economic Dislocation and Worker Adjustment Assistance Act would develo the self-employment option in the U.S. in a way that is thoughtful, judicious and serious. It would remove, on a demonstration basis, the barriers and disincentives to self-employment that currently exist within the UI system. It would encourage the development of comprehensive but different self-employment support systems in different economic, social and geographic contexts. And it would provide for the careful evaluation of the relative merits of different approaches in a way that can guide the appropriate development and expansion of the self-employment option.

It is wholly appropriate that the Self-Employment option be pursued on a demonstration basis, given the novelty of the effort and lack of U.S. experience to guide the structure of a national program. But as consideration of the specific authorizing language proceeds, it is important to insure that the legislation which so appropriately opens up the self-employment option to dislocated workers does not unnecessarily restrict its broader use. For example, the current language would seem to block states other than the 5 to 10 chosen for the demonstration to use the self-employment option until the demonstration is complete (3 years), no matter how promising the early results. Similarly, it seems to restrict participation to UI recipients rather than the broader class of "dislocated workers" defined in Title I. The challenge of economic dislocation is huge; we will need all the useful tools at our disposal to confront it, self-employment among them. Thank you for your leadership to this end.

STATEMENT
OF THE
FOOD MARKETING INSTITUTE

ON S. 538

THE ECONOMIC DISLOCATION AND
WORKER ADJUSTMENT ASSISTANCE ACT OF 1987

SUBMITTED TO THE
SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY
AND THE
SUBCOMMITTEE ON LABOR
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

APRIL 8, 1987

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The Food Marketing Institute (FMI), on behalf of America's retail grocers and grocery wholesalers, appreciates the opportunity to present its views on the Economic Dislocation and Worker Adjustment Assistance Act of 1987, S. 538.

FMI is a nonprofit association conducting programs in research, education and public affairs on behalf of its 1,500 members -- food retailers and wholesalers and their customers in the United States and overseas. FMI's domestic member companies operate more than 17,000 retail food stores with a combined annual sales volume of $150 billion -- half of all grocery sales in the United States. More than three-fourths of the FMI's membership is composed of independent supermarket operators or small regional firms. Its international membership includes more than 150 members from 40 nations.

Enactment of this legislation in its current form would be a disaster for our industry and our employees. The economic circumstances that prompt this legislation simply do not apply to the food distribution industry. Because of the dynamics of our industry, the mandatory advance notice and consultation called for in the bill would be unworkable and counterproductive.

The recent hearings and the entire debate about plant closing legislation have focused on the manufacturing sector of our country's economy. Indeed, the term "plant closing" itself conjures up an image of a huge steel mill or manufacturing plant, yet the legislation defines employer as "any business enterprise...." It is not realistic to include retailing, especially food distributors, in the same context as large-scale manufacturing. The economics and dynamics of retailing and manufacturing are very different. Yet S. 538 does not recognize differences among industries. The Secretary of Labor's Task Force on Economic Adjustment and Worker Dislocation focused on manufacturing when it considered mandatory notice. Proponents of the bill focus on manufacturing when they argue about the need for mandatory notice. But the shotgun of mandatory notice in this legislation is going to hit one of our most dynamic and innovative industries -- food distribution.

FMI and it members agree that as much notice as possible for all concerned is a desirable goal whenever a plant or store is closed. But a fixed notice period covering all circumstances simply makes no sense. Indeed, many of the states that have considered this issue have reached this conclusion. Massachusetts' plant closing law calls for voluntary notice and recently the New York Compact adopted this same voluntary approach.

The rationale for plant, or store, closing legislation does not apply to the food distribution industry. First, we are a job producing industry. We are not a declining industry -- a major theme in the plant closing debate. According to the Bureau of Labor Statistics (BLS), in 1973 there were 2.416 million people working in food stores and grocery wholesaling. In 1985 there were 3.513 million. Comparing all industries, the BLS reports food stores were in the highest job-growth category in America during this period. Jobs are being created at a faster pace in our industry than just about any other segment of the economy.

As part of our testimony we would like to submit an article by Steven E. Haugen, an economist with the Bureau of Labor Statistics, that appeared in the August 1986, Monthly Labor Review. "The Employment Expansion in Retail Trade, 1973-85" graphically illustrates a segment of the American economy whose growth and whole character stand in vivid contrast to the industries that are the premise of the proposed legislation.

Second, the grocery industry in America is marked by ongoing innovation and change in the size and format of stores. This is a process that would be stifled by mandatory store closing notice requirements. "Store closings" reflect the fact that new stores are constantly being built. Super stores today are over 60,000 square feet and employ more people because of customer demand for labor-intensive services like bakeries and delis. Often stores are simply sold to other operators who remodel and reopen them. In this process, jobs do not leave a community. While small grocery stores have declined in number from 98,520 in 1981 to 45,400 in 1985, the number of supermarkets have increased from 28,680 to 30,505, and the number of convenience stores from 37,800 to 78,095. The total number of food stores of all kinds went down from 167,000 to 154,000 from 1980 to 1985. In this same time period, food store and grocery wholesaling employment rose from 3.039 million to 3.513 million.

In 1985, 3.1 percent of all supermarkets were newly opened, 4.2 percent were closed, 2.3 percent were acquired, and 9.9 percent received major remodelling. The average age of a supermarket building in 1985 was only 6.7 years. This startling figure vividly demonstrates the vitality of our industry. "Store closing" legislation would inhibit this vitality.

Third, unlike a middle-aged, highly skilled auto worker, who is the typical worker cited in the plant closing debate, supermarket employees tend to be young. The BLS reports that in 1985, 40 percent of all workers in retail trade were under 25 and that this is twice the percentage of the country's overall workforce. In addition, the grocery industry is marked by high employee turnover -- around 50 percent in most cases.

Further, in 1985 the average supermarket had more part-time employees than full-timers. Food retailing is a 24-hour-a-day, seven-day-a-week business. As a result, a high proportion of employees are part-timers. Schedules can be flexible, which is convenient for many women with families and for young people in school. The grocery store, and other retail stores too, represent a significant number of entry-level opportunities for young people to enter the job market. The story of a high school or college student working part time behind a cash register or stocking shelves is as American as apple pie. Today, the demand for these young employees is greater than ever. In fact, because we are a growth industry, supermarket operators are having trouble attracting and retaining employees. At a recent meeting of FMI members in Cleveland, the second-most important issue to them was the shortage of entry-level employees. Another major concern was employee retention. The fact is that a supermarket employee who loses her job because the store is closed is in most cases readily employable. She has a skill that is in great demand. She is in no way like the steel mill worker who needs complete retraining.

Fourth, the economics of retailing are totally different from other industries. A grocery store is viable as long as there is a customer base in the community. It depends on the community. It is not as dependent on factors involving international competitiveness, distant markets, long-term contracts, nor the value of the dollar. On a day-to-day basis, a grocery store owner is dependent on attracting people to come through his doors versus a competitor's around the corner.

The grocery industry is based on high volume and low profit margin. The average product turns over 19.97 times a year. Bread, milk and other perishables turn over much faster. The operating profit after taxes as a percent of total sales for the industry in 1985 and 1986 was 1.19 percent -- about a penny on the dollar. At this pace, business viability can change quickly; a store owner can start losing money fast. It is not like a manufacturer with inventory, long term contracts and future delivery dates.

Consider what happens when a hypothetical grocer, losing $10,000 a week, announces the store is closing.

- o The employees will find other jobs, the best ones leaving first -- perhaps for the nearby competitor who put the grocer in the jam;

- o Second, credit will dry up. Grocers cannot operate solely on cash, the constant product turnover requires constant credit to keep product on the shelf;

- o Third, pilferage will increase -- unpaid-for groceries will go out the front and the back doors at an increasing pace;

- And last but not least, the customers will disappear. Once the word is out customers head across the street to the competitor, and this process accelerates as stocks and service decline. The grocer losing $10,000 a week will spend the next several months losing even more money, perhaps even forcing personal bankruptcy.

The operating premise of all supermarkets today is high volume, and they can only operate one way -- 100 percent. Either a store is open for business or it is closed. It cannot phase out, slow down gradually. A closing grocery store does not have a "going out of business sale," "milk 1/2 price." A grocery store is like a helicopter -- as long as it is flying it is fine, but it cannot glide. If the engine stops, it drops like a rock. This is why advance notice cannot be mandated.

But, backing up for a moment, if a store is in trouble, the owner can take corrective steps, and closing is the last and least likely avenue. More often than not his troubles are due to competition from another grocer. The grocer has built his business as a part of the community, and he knows his customers. His first move is to take any number of steps to get them back. He will consider strategies involving pricing, services, layout, product mix, hours, store appearance, store expansion, and advertising, among others.

If these steps fail, more often than not the owner will sell the store. This is again in marked contrast to what happens in other industries faced with impending failure. One of the reasons given for the need for advance notice and consultation is to get local government involved in finding a buyer or new user for the plant building. This is not necessary in the grocery industry. A grocery store building, retail space, is a very marketable item. The owner has every incentive to sell it while it is still open, to show customer traffic, that it is a viable business. The value goes down if the property is closed. Selling a closed retail facility is like trying to sell a car with no battery and four flat tires. And regarding notice, once a deal is agreed to, both parties want to make the transition as quickly as possible.

Finally, we would like to comment briefly on the consultation provisions in S. 538. As many others have noted, these provisions are obviously aimed at preventing plant, or store, closings. Grocers and other employers can easily be hamstrung by labor for not consulting "in good faith" over "alternatives" to the closure. The requirement that local government be consulted, in particular, would prevent most store closings. What local politician would allow a neighborhood grocery store to close?

Plant closing legislation is supposedly meant to help America be more competitive in the world economy. The worker adjustment assistance titles of S. 538 can be important and helpful toward that end. But as far as the grocery business is concerned, American's food distribution industry is the world's leader in productivity, innovation, competition, and efficiency. America may have lost the edge in automobiles, steel, and other industries, but not in food. American's devote a smaller portion of their disposable income to food than people in any other developed country. In 1984, an average of 10.8 percent of American consumers' disposable income went for food and beverages consumed at home. This figure has been steadily declining over the years; it was 20.2 percent in 1930. This shows how competitive the industry is — the kind of productivity and competitiveness we wish our declining industries could muster. We have constantly been modernizing, moving, closing, opening and innovating. The flexibility of grocery store operators to be able to do so — to be willing to take a risk on a new store and format, or on remodelling an old location — would be eliminated by this store closing legislation.

For all the reasons above, the Food Marketing Institute urges the Committee to delete mandatory advance notice and consultation from the Economic Dislocation and Worker Adjustment Assistance Act of 1987. Thank you for the opportunity to submit our views.

The employment expansion in retail trade, 1973–85

Strong employment gains in the industry can be attributed mostly to exceptional growth in eating and drinking places and food stores; part-time positions accounted for much of the overall growth

Steven E. Haugen

One of the largest and fastest growing industries in the United States, in terms of employment, is retail trade. Nearly 17.4 million persons were employed in this field in 1985, or more than 1 of every 6 nonagricultural wage and salary workers. From 1973 to 1985, retail trade employment expanded by 5 million, accounting for a fourth of the total nonagricultural employment increase over the period. Only services and manufacturing employed a larger number of workers, and only services; finance, insurance, and real estate; and mining exhibited a higher rate of employment growth over the 12-year period. Although growth in retail trade employment was pervasive, a closer inspection reveals that most of the increase can be attributed to very sharp expansion in two key industries within the retail trade division—eating and drinking places, and food stores.

This article discusses employment trends in retail trade as well as in key industry groups since 1973. In addition, it explores the changing demographic, occupational, and earnings characteristics of retail trade workers, as well as the incidence of self-employment in the industry. Data for the years 1973 and 1985 were chosen for comparison, because they are indicative of periods characterized by relatively robust economic activity and, more importantly, because they each represent the third year of recovery following a recession.[1]

Data for this study were derived from both the Current Employment Statistics survey and the Current Population Survey.[2] The Current Employment Statistics survey is a monthly sample of the payroll records from 250,000 business establishments nationwide and is widely regarded as the most detailed and statistically reliable source of information on industry employment, hours, and earnings. Data from this survey are used in the analysis of employment and earnings trends among wage and salary workers in retail

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trade industries over time. However, because the payroll survey does not provide information on the demographic or occupational characteristics of workers, or on self-employed and unpaid family workers in the industry, data on these subjects were derived from the Current Population Survey, a monthly sample survey of 59,500 households nationwide.

What is retail trade?

The role of retail trade industries in a market-based economy is obvious: to serve as "middlemen" between those who supply goods and those who purchase the goods for final consumption. More formally, the retail trade division, as defined in the 1972 *Standard Industrial Classification Manual*, includes ". . .establishments engaged in selling merchandise for personal or household consumption, and rendering services incidental to the sale of the goods." These firms are classified into eight major component industries, including general merchandise stores, food stores, automotive dealers and gasoline service stations, apparel and accessory stores, and eating and drinking places.[3] Altogether, there were about 2 million retail establishments in 1982.[4] Clearly, retail industries are the major conduits for the distribution of goods from producer to consumer. As such, they should be distinguished from their wholesale trade counterparts, which employ roughly one-third as many workers basically in the sale of goods to retailers or to industrial or commercial users.

Retail trade, by nature, is highly labor intensive, and by and large it is the retail worker who usually plays the preeminent role in the transaction between buyer and seller. Although there have been recent developments in the way retailers conduct business that are lessening the dependence upon workers for certain tasks, such as the extensive use of computerized gasoline pumps to serve customers, there are many services provided by the industry for which it has been exceedingly difficult to substitute capital for labor. Whether through providing information and assistance to the customer in the selection of the product, ringing up the sale, or in delivering the product, the retail worker is an intrinsic and seemingly irreplaceable "factor of production" in the industry. Therefore, just as consumer demand for all kinds of merchandise has increased over time, retail employment has expanded to handle the larger number of transactions between producer and consumer.

Overall growth

Employment in retail trade expanded by 5.0 million between 1973 and 1985, an increase of about 41 percent. By comparison, employment in all nonagricultural industries increased by about 27 percent. Relatively stronger employment growth in retail trade over the period reflects not only increases during business expansions that were either proportionately equal to or greater than those for all industries, but also more resilience to employment declines during each of the three recessions that occurred during the 12-year period under study. The following tabulation shows seasonally adjusted percent changes in employment during selected business cycle expansions and contractions. (As of March 1986, the economy was in the 40th month of business recovery since the recession trough in November 1982.)

Business cycles	*All nonagricultural industries*	*Retail trade*
Expansions:		
March 1975–January 1980	18.8	20.6
July 1980–July 1981	2.0	1.9
November 1982–March 1986	12.2	17.5
Contractions:		
November 1973–March 1975	−1.8	0
January 1980–July 1980	−1.2	−1.0
July 1981–November 1982	−3.0	−0.4

It may seem somewhat surprising that employment in retail trade was not only far less affected by cyclical downturns than that in all nonagricultural industries, but also that it barely declined at all in the two longer recessions of the 1973–85 period. Logically, when consumer demand wanes, employment in retail trade would be expected to decline as fewer workers are needed to handle the smaller volume of sales. Indeed, although overall employment in the retail division remained relatively unchanged during the three contractions, a closer look reveals that there were substantial differences in the response to cyclical and other developments by individual retail industries.

Employment growth by industry

For the purposes of this analysis, the eight major industry groups within the retail trade division can be broken down into three groups: 1) "slow" growth industries—those which grew only slightly during expansions and experienced deep employment declines as a result of recessions, resulting in little growth over the 1973–85 period, 2) "medium" growth industries—those which exhibited marked employment growth over the period, growing during recoveries and suffering only moderate declines during recessions, and 3) "strong" growth industries—those which grew very sharply during expansions and continued to grow during contractions, thereby establishing a pattern of extraordinary employment growth over the entire period. (See table 1.)

Slow growth industries. The general merchandise stores and automotive dealers and gasoline service stations industry groups exhibited the slowest rate of growth among the retail industries over the period, each expanding by less than 7 percent over the entire 12 years. The general merchandise stores industry, the third largest retail employer in 1985, is basically comprised of department stores and similar establishments which sell a wide variety of products. The industry had been the second largest in 1973 when it employed some 2.2 million workers. However, relatively weak employment growth since that time, in part reflecting sharp and protracted employment declines as a result of business cycle contractions, substantially eroded its share of retail employment. By 1985, the industry employed 2.3 million workers. Automotive dealers and service stations, at 1.9 million in 1985, were only 115,000 above the 1973 level. Like general merchandise stores, this industry was severely affected by cyclical downturns (which is not surprising, given the industry's close attachment to the very cyclically sensitive automobile manufacturing industry). In addition, the gasoline crises of 1973 and 1979 had a deleterious impact on automotive dealers and gasoline service stations. Resultant losses limited overall employment growth over the 1973–85 period.

Medium growth industries. The building materials and garden supplies, apparel and accessories, furniture and home furnishings, and miscellaneous retail industries registered substantially greater employment growth than the first group of industries over the period. Among these four industries, growth was proportionately the smallest for the building materials and garden supplies industry. Comprised of all stores which sell primarily lumber, hardware, and other building supplies, this industry grew by 28 percent, employing a total of 685,000 persons by 1985. Slightly stronger employment growth occurred within apparel and accessories, as clothing stores and related establishments employed about 1 million persons in 1985, or 31 percent more than in 1973. The furniture and home furnishings industry exhibited fairly sharp growth, expanding by 38 percent to an employment level of 735,000 in 1985. Like the "slow" growth group, though to a lesser degree, all three of these industries suffered significant employment losses as a result of the recessions which occurred over the 1973–85 period. The last member of this "medium" growth group, miscellaneous retail, added 640,000 workers over the period, reaching a level of 2.2 million workers. This represents an expansion of 41 percent. Miscellaneous retail includes all retail establishments that cannot be classified in the seven other industries, such as drugstores, bookstores, and mail order houses.

Strong growth industries. Food stores and eating and drinking places comprised the "strong" growth group. The food stores industry, which includes all businesses which primarily sell food for home preparation, grew rapidly over the period and by 1985 was the second largest industry within retail trade. This industry is comprised of groceries, bakeries, various produce markets, and similar establishments. There were 2.8 million workers employed in the food stores industry in 1985, up roughly 925,000 from the 1973 level, representing an increase of 50 percent.

The eating and drinking places industry, which remained the largest industry in the division throughout the period, registered the highest employment growth rate since 1973 among the eight retail industries (87 percent). Composed of restaurants of all types, including cafeterias, fast food restaurants, and sit-down eating places, as well as a full range of establishments engaged in the retail sale of beverages for on-site consumption, the industry employed 5.7 million persons in 1985, up 2.7 million since 1973. Thus, this industry alone accounted for half of total employment growth in retail trade over the period.

Eating and drinking places and food stores industries together employed 8.5 million persons in 1985 (about half of all retail workers), and accounted for 71 percent of employment growth in retail trade since 1973. (See chart 1.) Not only did these industries grow at a much faster pace than the rest of retail trade during expansions, but employment increases in these industries during recessions were sufficient to largely offset declines that occurred in the rest of the retail industries.[9] The following tabulation shows the changes in employment in the eating and drinking places and food stores industries and all other retail industries during selected business cycle expansions and contractions

Table 1. Number of employees in the retail trade industry by major division, 1973–85 annual averages
[In thousands]

Year	Total nonagricultural employment	Total retail trade	Building materials and garden supplies	General merchandise stores	Food stores	Automotive dealers and service stations	Apparel and accessory stores	Furniture and home furnishings stores	Eating and drinking places	Miscellaneous retail trade
1973	76,790	12,329	535	2,259	1,856	1,779	796	533	3,054	1,551
1974	78,265	12,554	542	2,210	1,946	1,666	811	538	3,231	1,579
1975	76,945	12,645	521	2,113	2,007	1,677	838	517	3,380	1,605
1976	79,382	13,209	546	2,165	2,059	1,744	862	540	3,600	1,687
1977	82,471	13,808	576	2,204	2,108	1,801	870	562	3,840	1,740
1978	86,697	14,573	639	2,309	2,199	1,861	929	595	4,277	1,816
1979	89,823	14,989	673	2,267	2,287	1,810	946	615	4,513	1,885
1980	90,406	15,035	617	2,246	2,384	1,699	957	606	4,626	1,912
1981	91,156	15,189	607	2,230	2,446	1,653	968	585	4,750	1,938
1982	89,566	15,179	598	2,164	2,479	1,632	963	584	4,831	1,940
1983	90,200	15,613	615	2,165	2,566	1,674	983	608	5,042	1,988
1984	94,496	16,545	650	2,257	2,637	1,769	1,038	670	5,369	2,109
1985	97,614	17,360	685	2,320	2,779	1,894	1,042	730	5,715	2,191

NOTE: Data were obtained from the Current Employment Statistics (establishment) survey.

(employment in thousands, seasonally adjusted):

Business cycles	*Eating and drinking places and food stores*	*All other retail industries*
Expansions:		
March 1975–January 1980	1,649	954
July 1980–July 1981	210	88
November 1982–March 1986	1,399	1,260
Contractions:		
November 1973–March 1975	289	−235
January 1980–July 1980	51	−216
July 1981–November 1982	158	−235

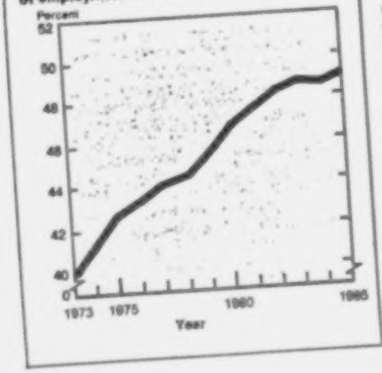
Job growth factors

There are many factors which can be associated with employment growth in retail trade since 1973. Obviously, increasing consumer demand is largely responsible, and to some extent, this simply reflects population growth and the increase in aggregate income over the period. Perhaps more importantly, there are many demographic and socioeconomic developments which have directly and indirectly magnified demand for goods and services in general, including the increased incidence of working women, and thus of two-income families; an increased number of persons who live alone; and a general trend towards increased demand for leisure time. One end product of these changes is the gradual emergence of a more affluent society, in which time has become a scarcer resource.[6] This, in turn, has led to increased customer demand for convenience. Consumers have less time for shopping, and they want to be able to shop whenever time becomes available. As a result, many retail stores have not only increased in size and number, but have expanded their hours of operation as well. Both factors have resulted in the addition of more workers in retail trade, particularly part-timers. Probably the greatest impact of these developments has been in the eating and drinking and food store establishments.

It is generally more expensive to eat meals prepared in restaurants than it is to eat at home, and this disparity has widened over time. Consequently, all other things being equal, one would expect to see a cutback in the amount of dollars spent on food away from home. In fact, there has been a change in eating habits. Data from BLS Consumer Expenditure Surveys indicate that between 1972–73 and 1982–83, not only has the proportion of the overall consumer's budget spent on food declined, but that of this total food budget, the proportion spent on food away from home has increased significantly.[7] This preference of eating out to cooking at home can certainly be associated with the increasing desire to conserve time, as it typically takes more time to prepare a meal at home than it does to eat out. As noted previously, there are many groups that have had more constraints placed upon their available time, and many of them find it more convenient to eat out, augmenting demand for the industry.[8]

But if this is the case, then why has demand in the food stores industry increased as well? In addition to the marked population growth over the period, one possible reason for the increase over time is the growing diversification of products offered by grocery stores. To meet the consumer's growing demand for convenience, grocery stores have increasingly offered many services and products that once were the province of other industries.[9] These include the installation of delis and salad bars, service centers for check cashing, and other services such as film processing.[10] Ultimately, demand for the industry has increased as people are able to obtain a wider selection of goods with just one stop at a store, thereby saving time.

Chart 1. Employment in eating and drinking places and food stores as a percentage of employment in retail trade, 1973-85



Technical innovations and productivity

Employment growth in retail trade over the 1973–85 period would probably have been even more dramatic had it not been for the adoption of many labor-saving and management-related innovations which have helped to increase productivity in the sector. For example, the use of computer technology to manage inventories and handle customer billing and accounting has limited the labor resources that were once needed to handle these tasks.[11] In addition, the overall trend towards consumer self-selection of merchandise has limited labor requirements in many industries, such as the proliferation of self-service pumps at gas stations and convenience stores and the self-selection of products in apparel and department stores.

In part reflecting these innovations, productivity in the retail trade division increased at an average annual rate of

1.0 percent from 1973–84, slightly higher than the 0.8 percent recorded for the total business sector.[12] However, there were divergent movements in productivity over the period for many of the detailed retail industries. In fact, among the retail industries for which data are available, there were average annual productivity declines for only two industries, eating and drinking places and food stores. As increased output can be satisfied by either increased productivity or increased input, these two industries were increasingly reliant upon labor to meet the higher output requirements.

Characteristics of retail workers

An understanding of certain characteristics of the retail trade work force helps explain employment patterns and trends in this industry division. Historically, the retail trade work force has differed in many respects from the overall work force. For example, the industry has typically employed a disproportionately large share of part-time workers, women and young persons, sales and service workers, workers who have below average earnings, as well as self-employed and unpaid family workers. While this profile has changed little between 1973 and 1985, there have been important changes in the proportionate representation of these groups.[13]

Part-time workers. Employment growth in retail trade may be somewhat misleading if one does not note the fact that much of the growth reflected large increases in the size of the part-time component. More than 1 of every 3 retail trade workers was employed on a part-time basis in 1985—twice the proportion of total nonagricultural employment. Although the services industry employed a larger number of part-time workers, no other industry had such a large proportion of its work force putting in fewer than 35 hours per week. Part-time employment was even more prevalent in 1985 than it had been 12 years earlier. In fact, about 40 percent of the employment growth in retail trade since 1973 has been among part-time workers; the relative contribution of part-timers to total employment growth for all nonagricultural industries was about one-fourth.[14] (See table 2.) This finding is supported by data from the establishment survey, which show that average weekly hours in the industry have fallen by about 11 percent since 1973, twice the proportional decline in all private nonagricultural industries.

Table 2. Percent distribution of employed wage and salary workers in the retail trade industry by selected characteristics, 1973 and 1985 annual averages

Characteristics	1973		1985	
	Total	Retail trade	Total	Retail trade
Total, 16 years and over	100.0	100.0	100.0	100.0
16 to 19 years	8.7	21.6	6.1	18.5
20 to 24 years	16.0	16.7	13.8	21.4
25 years and over	75.4	61.7	80.0	60.1
Men, 16 years and over	61.1	52.0	54.9	47.6
16 to 19 years	4.8	11.6	3.1	8.8
20 to 24 years	9.3	9.3	7.1	10.2
25 years and over	47.0	31.1	44.6	28.5
Women, 16 years and over	38.9	48.0	45.1	52.4
16 to 19 years	3.8	10.0	3.0	9.7
20 to 24 years	6.7	7.4	6.7	11.2
25 years and over	28.4	30.6	35.4	31.6
Full-time workers[1]	86.1	68.0	83.8	65.3
Men, 16 years and over	56.4	41.1	49.9	36.2
Women, 16 years and over	29.7	26.9	33.9	29.1
Part-time workers[1]	13.9	32.0	16.2	34.7
Men, 16 years and over	4.7	10.9	5.0	11.4
Women, 16 years and over	9.2	21.1	11.2	23.3

[1] Employed persons with a job but not at work and persons at work part time are distributed according to whether they usually work full or part time.

NOTE: Data were obtained from the Current Population (household) Survey and exclude agricultural and private household workers.

There are several reasons part-time employment is so prevalent in retail trade. From the standpoint of the employer, hiring part-time workers is an efficient way to handle changes in the extended hours of operation necessitated by ever-fluctuating consumer demand for retail goods. Consumer demand for many products varies seasonally, monthly, and even daily. As mentioned earlier, the emergence of a "time-scarce" American consumer has exacerbated the variability of peak and non-peak periods of demand. The result is that most retailers must stay open evenings, Saturdays, and, in many cases, even Sundays, to capture as much of this demand as possible. However, because these oscillations in demand are somewhat predictable, the retailer can use part-time labor to meet the demand at any given time.[15]

Just as many retailers have a need for part-time workers, so do many workers have a need for part-time jobs. Part-time schedules are often fairly flexible, allowing the worker time for other activities. This being the case, it is not surprising that women and young workers make up a large portion of the part-time workers in the industry. For example, in 1985, two-thirds of the part-time work force in retail trade were women. For many women, part-time work affords the option of supplementing family income while still allowing time for maintaining a home and child rearing; for youth, part-time work is scheduled around school attendance.

Demographic characteristics of workers. When compared with other industries, retail trade has always had a disproportionately high concentration of women and young workers. Women accounted for just under two-thirds of the employment growth in the industry between 1973 and 1985, boosting their proportion of the retail trade work force to just over one-half. This increase reflects changes occurring in the work force, as women also made up two-thirds of employment growth in all nonagricultural industries over the same period; as a result, the proportion of women in the work force increased from 39 to 45 percent.

The situation is somewhat different for young workers. Despite the general aging of the overall work force, young workers (16 to 24 years of age) commanded an even larger share of retail trade employment in 1985 than in 1973. This was entirely due to very large increases in the number of retail workers 20 to 24 years of age. In fact, about 73 percent of the increase in total industry employment for workers ages 20 to 24 occurred in retail trade. Teenagers accounted for about 1 of every 5 retail workers in 1985, and more than half of all employed teens worked in retail trade. On the whole, about 40 percent of all workers in retail trade were less than 25 years of age in 1985, twice the percentage for the overall work force; the figures in 1973 were 38 and 24 percent, respectively. (See table 2.) There is little variation in the extent to which whites and minorities hold jobs in retail trade. About 17 percent of both white and Hispanic workers were employed in the industry in 1985, compared with about 14 percent of black workers.[16]

There are several likely reasons for the relatively high prevalence of young and female workers in retail trade. Young workers typically have fewer job skills and less training than their older counterparts. In addition, as mentioned earlier, both young and female workers have a relatively high proclivity to work part time. Based on the fact that skill requirements in the industry are generally low, and that part-time work arrangements are often easily accommodated, many young and female workers find positions in the industry very suitable.

Occupation. Sales and service jobs were the most prevalent occupations in retail trade in 1985.[17] About 42 percent of all workers in the industry held sales positions, and about 23 percent were employed in service jobs. Most of those in the latter category worked in eating and drinking places. Combined, these two occupational groups accounted for almost two-thirds of the employed total in retail trade; this compares with about 25 percent of those in all industries. Within retail trade, the most prevalent occupations in the sales and service areas were salesworkers, sales supervisors, cashiers, and food preparation and service workers. (See table 3.)

Table 3. Occupational distribution of employment in the retail trade industry, 1985 annual averages

Occupation	1985	
	Total employed	Retail trade
Total employed	100.0	100.0
Managerial and professional specialty	24.1	9.5
Executive, administrative, and managerial	11.4	7.6
Professional specialty	12.7	1.9
Technical, sales, and administrative support	31.0	50.0
Technicians and related support	3.0	.3
Sales occupations	11.8	41.6
Administrative support, including clerical	16.2	8.1
Service occupations	13.5	23.3
Private household	.9	—
Protective service	1.6	.3
Service, except private household and protective	10.9	23.0
Precision production, craft, and repair	12.4	6.4
Operators, fabricators, and laborers	15.7	10.7
Machine operators, assemblers, and inspectors	7.3	.8
Transportation and material moving occupations	4.2	2.3
Handlers, equipment cleaners, helpers, and laborers	4.1	7.6
Farming, forestry, and fishing	3.2	.1

NOTE: Data were obtained from the Current Population (household) Survey.

Earnings. Pay in the retail trade industry has historically been below average, and the disparity has widened. Weekly earnings in the industry (derived from the Current Employment Statistics survey), at $175 in 1985, were 58 percent of the figure for all private nonagricultural wage and salary workers; this ratio was down from 66 percent in 1973. Within retail trade, weekly earnings ranged from a high of $273 in automotive dealerships and service stations to $112 in eating and drinking places in 1985. (See table 4.)

A study of earnings in the industry is complicated, however, by the many varied pay arrangements. Commissions and tips supplement, to varying degrees, earnings within

Table 4. Average weekly earnings of private nonagricultural production or nonsupervisory workers in the retail trade industry, 1973–85 annual averages

Year	Total private nonagricultural employment	Total retail trade	Building materials and garden supplies	General merchandise stores	Food stores	Automotive dealers and service stations	Apparel and accessory stores	Furniture and home furnishings stores	Eating and drinking places	Miscellaneous retail trade
1973	$145.39	$96.32	$128.62	$86.94	$111.20	$135.17	$80.74	$131.30	$65.16	$101.51
1974	154.76	102.68	135.64	92.06	121.58	143.06	86.86	137.23	69.02	106.57
1975	163.53	108.86	142.95	98.18	131.30	149.76	91.61	144.94	74.21	113.22
1976	175.45	114.60	152.66	104.01	144.21	158.58	96.45	151.02	76.67	118.88
1977	189.00	121.66	160.78	110.83	155.03	170.62	102.61	166.73	81.75	126.05
1978	203.70	130.20	175.68	118.67	167.36	184.88	110.11	169.21	87.28	132.83
1979	219.91	138.62	189.32	128.21	179.74	200.72	117.09	182.34	93.74	143.91
1980	235.10	147.38	198.94	139.75	194.69	212.35	122.12	192.44	96.31	152.29
1981	255.20	158.03	209.76	150.36	212.35	228.23	132.60	205.52	103.10	160.07
1982	267.26	163.85	216.04	157.39	221.65	235.90	135.77	212.72	107.10	167.94
1983	280.70	171.05	221.17	160.50	229.61	249.44	141.05	227.41	112.30	174.69
1984	292.86	174.33	232.32	163.56	230.79	263.61	143.60	235.63	112.04	180.39
1985	299.09	174.64	239.58	168.60	231.97	272.88	143.33	239.57	111.71	187.05

NOTE: Data were obtained from the Current Employment Statistics (establishment) survey.

several component industries. Earnings received on a commission basis, which are included in the Current Employment Statistics survey, occur in industries with a heavy proportion of salesworkers, and vary according to product sold. Big ticket items, such as automobiles, major appliances, and jewelry offer the best chance for commission-type arrangements. Presumably, tips, which are excluded from the survey, are the most common type of compensation over and above regular pay in eating and drinking places. As a result, the payroll data somewhat understate the average earnings of workers in this industry.

Many jobs in retail trade offer no such supplement to regular wages, and therefore it is useful to look at the earnings of workers paid at an hourly rate. Data from the Current Population Survey indicate that the median hourly earnings for retail trade workers paid at an hourly rate in 1985 were $4.15. About two-thirds of those workers paid at hourly rates made less than $5 an hour. About one-fourth earned the prevailing minimum wage of $3.35 or less—a much larger proportion than in any other industry. In fact, half of all minimum wage and subminimum wage workers were employed in retail trade.[18]

There are several characteristics of the retail trade work force which can be associated with the generally low earnings in the industry division. These include, among others, an occupational structure heavily biased toward sales and service positions, employment disproportionately composed of young workers, and industry operations that are tailored for part-time positions. Because these groups and job characteristics are associated with lower pay in general, it follows that earnings in retail trade would be affected negatively. Indeed, the increasing proportionate sizes of these groups in retail trade over time may be related to the widening earnings gap between the industry and the all-industry average.

Self-employed and unpaid family workers. While wage and salary employment in retail trade grew markedly between 1973 and 1985, the number of self-employed workers in the industry changed very little. As a result, their proportion of total employment declined from 10 to 8 percent over the period. The number of unpaid family workers in the retail industry actually fell over the period, and by 1985, they represented less than 1 percent of the employed total in the sector. Both of these developments suggest a decline in the role of self-owned retail businesses in the industry.

THE RELATIVELY STRONG employment growth in the retail trade division over the 1973–85 period can mostly be attributed to extraordinary growth in eating and drinking places and food stores. Although a few other retail industries exhibited substantial employment growth over the period, several factors, including the increased importance of spare time and convenience to consumers, augmented demand for eating and drinking places and food stores to a much larger extent than that for retail trade in general. BLS projections indicate that employment growth in eating and drinking places and in food stores will continue strongly through 1995, albeit at a slightly slower pace than in the past. This, combined with projected declines in the rate of employment growth among other retail industries, seems to suggest that in contrast to past performance, overall retail trade employment growth over the 1984–95 period will be only slightly stronger than that for all industries.[19] ☐

——FOOTNOTES——

[1] The business cycle expansion and contraction periods are determined by the National Bureau of Economic Research, a private, nonprofit research organization located in Cambridge, MA.

[2] Because the two sources differ in definition, coverage, methods of collection, and estimating procedures, estimates of employment are not identical. For a detailed comparison of the two surveys, see the "Explanatory Notes" section of the BLS monthly publication, *Employment and Earnings.*

[3] The following industry groups comprise the major "two-digit" retail industries in the sector:

SIC 52—Building materials, hardware, garden supply, and mobile home dealers
SIC 53—General merchandise stores
SIC 54—Food stores
SIC 55—Automotive dealers and gasoline service stations
SIC 56—Apparel and accessory stores
SIC 57—Furniture, home furnishings, and equipment stores
SIC 58—Eating and drinking places
SIC 59—Miscellaneous retail

These groups are further broken down into more detailed three- and four-digit industries. See the U.S. Office of Management and Budget's *Standard Industrial Classification Manual, 1972,* for further information and a more detailed explanation of the codes.

[4] See *1982 Census of Retail Trade* (Bureau of the Census, Nov. 1984), p. 2.

[5] One characteristic common to both of these industries that substantially insulates them from cyclical downturns, and thus the associated employment losses, is that food and related products represent a "need" rather than a "want." Consequently, potential employment declines in these industries are mitigated. However, the fact that employment in these industries actually grew significantly during the three recessions reflects considerable consumer demand for their products.

[6] Jagdish N. Sheth, "Emerging Trends for the Retailing Industry," *Journal of Retailing*, Fall 1983, p. 6.

[7] For further information, see Raymond Gieseman and John Rogers, "Consumer expenditures: results from the Diary and Interview surveys," *Monthly Labor Review*, June 1986, pp. 14–18.

[8] William Dunn, "The Ifs and Promises of Eating Out," *American Demographics*, January 1985, p. 35.

[9] See Sheth, p. 7.

[10] See *Progressive Grocer Magazine*, selected "Annual Reports of the Grocery Industry."

[11] See Michael A. Gallo and Robert B. Nenno, *Computers and Society* (Boston, Prindle, Weber and Schmidt, 1985), pp. 182–86.

[12] Data were obtained from both published and unpublished sources from the BLS Office of Productivity and Technology. The productivity figures represent output per hour of all persons. Average annual productivity rates of change over the 1973–84 period for the total business sector,

retail trade, and available detailed retail industries are:

Total business sector	.8
Retail trade	1.0
SIC 54—Food stores	−.7
SIC 5511—Franchised new car dealers	.8
SIC 5541—Gasoline service stations	3.1
SIC 56—Apparel and accessory stores	3.7
SIC 58—Eating and drinking places	−.7
SIC 5912—Drugstores	1.3

[13] For information on the characteristics of workers in the retail trade industry over the 1968–78 period, see Barbara Cottman Job, "Employment and pay trends in the retail trade industry," *Monthly Labor Review*, March 1980, pp. 40–43.

[14] These data are based on a new definition of part-time employment recently developed by BLS. For a discussion of the new definition, see Thomas Nardone, "Part-time workers: who are they?" *Monthly Labor Review*, February 1986, pp. 13–19.

[15] For information on the demand for part-time labor in retailing, see Roy Thurik and Nico Van Der Wijst, "Part-Time Labor in Retailing," *Journal of Retailing*, Fall 1984, pp. 62–68.

[16] Persons of Hispanic origin are included in both the black and white population groups.

[17] Beginning with data for 1983, occupational data are classified according to the system used in the 1980 census, which was redesigned to reflect the occupational structure of the changing economy. This system is radically different from the 1970 census-based system which was adopted in 1972 and used through 1982. Therefore, data for 1985 are not comparable with pre-1983 estimates, and for this reason, occupational data for 1985 only are discussed in the text. Occupational data used in this report are representative of all workers in the retail trade industry, including the self-employed, private household workers, and unpaid family workers. Although these components are relatively small, it should be noted that these figures differ from the data used in the discussion of part-time, women, and young workers, which represent only nonagricultural wage and salary workers excluding private household workers.

[18] It should be noted, once again, that many of these hourly paid workers receive wages that are supplemented in varying degrees by tips and commissions. Furthermore, the existence of a substantial group of retail workers earning below the minimum wage does not necessarily indicate violations of the Fair Labor Standards Act but in fact may reflect exemptions to the Act, many of which pertain to the retail trade industry. For further information, and a more complete list of full and partial exemptions, see *Report of the Minimum Wage Study Commission*, vol. 1, pp. 107–38.

[19] See Valerie A. Personick, "A second look at industry output and employment trends to 1995," *Monthly Labor Review*, November 1985, pp. 26–41.

NATIONAL COMMISSION FOR EMPLOYMENT POLICY
1522 K Street, NW, Suite 300
Washington, D.C. 20005

(202) 724-1545

April 15, 1987

Honorable Paul Simon
Chairman
Committee on Employment and Productivity
United States Senate
SD-462 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Simon:

Thank you for the opportunity to comment on the legislation pending before the Subcommittee on Employment and Productivity regarding the serious problems affecting workers separated from their jobs due to plant closure or massive permanent layoffs.

You may recall that on April 6 I sent you a policy statement regarding worker adjustment assistance adopted by the Commissioners at our most recent meeting. I would like to resubmit that statement for the record (see attached) in response to the Federal initiatives proposed in both S. 538, the Economic Dislocation of Worker Adjustment Assistance Act and S. 539 (Part C), the Worker Readjustment Assistance Act of 1987.

We are currently in the process of conducting further analysis of these two bills and will possibly be drafting more reaching policy statements at our next meeting June 11, 12 which we are hoping you'll be able to attend. Please note attached letter of invitation dated April 9th.

The Commission encourages further consideration of this very crucial issue of national concern. We look forward to working with you further in the months to come.

Sincerely,

Gertrude C. McDonald

GERTRUDE C. MCDONALD
Chairman

NCEP STATEMENT ON WORKER ADJUSTMENT

The National Commission for Employment Policy welcomes legislative action to facilitate American workers' adjustment to changes in the workplace brought about by international competition, new technology, and other economic changes. The Commission believes that Title III of the Job Training Partnership Act, with relatively minor changes, is the appropriate vehicle for adjustment services to workers, which may include job search assistance, education, training, support services, relocation assistance, and a variety of other options suited to individual needs. Although we support adequate funding for this activity, we are concerned that any additional funding, without technical assistance and a better understanding of why current Title III funds are underutilized, may not produce the desired results of adequately assisting dislocated workers. Federal government must aggressively assist states and service delivery areas with research, demonstration projects and an extensive information and technical assistance campaign on effective program designs.

Effective programs need to be tailored to the circumstances of specific situations, but the Commission finds that there are some principles applicable to almost all cases. Assistance for displaced workers is most effective when:

- Firms provide affected workers, and the organizations which can assist them, as much voluntary advance notice as possible of closures or mass layoffs.
- Job search assistance and other support are provided in the work setting before the actual layoff or closing.
- Active cooperation with unions, where present, is an integral part of this process.
- There is coordination of private and public displaced worker programs with programs providing unemployment insurance, job search, adult and vocational education and other assistance.
- Workers are offered a range of options, since people differ in their needs for immediate income, their desire or ability to take training, and their willingness to relocate.
- Prospects for recall or transfer are communicated realistically.
- Governments at all levels support and facilitate adjustments to new situations, even though the ultimate responsibility is with firms and employees.

Title III of the Job Training Partnership Act provides an effective basis for a renewed national commitment to dislocated workers:

- Retain the flexible Title III eligibility criteria, specifically including self-employed individuals such as farmers and avoiding time-consuming determinations about the cause of workers' unemployment.

- Eliminate program matching requirements. The Commission's study of JTPA found that the effects of the matching requirements are either negative or neutral.

- *Require* states to establish a rapid response mechanism for major plant closings and mass lay-offs, but allow great flexibility in the design of the system.

- *Require* states to establish an on-going capability to assist dislocated workers statewide by *allocating a portion of the funds directly to service delivery areas* and marketing the program aggressively.

- *Integrate TAA services, but not payments to workers, into Title III.*

Finally, for the long term, the Commission recommends that the Administration and the Congress review the operation of the unemployment insurance system for factors that may tend to discourage worker adjustment and continue to experiment with program designs that encourage retraining and other early interventions with potentially long-term unemployment insurance recipients.

NATIONAL ASSOCIATION NAPIC OF PRIVATE INDUSTRY COUNCILS

April 17, 1987

The Honorable Paul Simon
United States Senate
Washington, D.C. 20510

Dear Senator Simon:

As you know, the Committee on Labor and Human Resources will soon consider legislation to improve and expand services for dislocated workers. The National Association of Private Industry Councils (NAPIC) and the nation's 630 PICs share your commitment to a quality program that puts American workers back to work, in good jobs, and in a timely manner. NAPIC convened a national meeting of PIC Chairpersons on February 1-2, 1987, to discuss this issue among others. The message of that forum was loud and clear from the 200 PICs represented: PICs have a unique capacity to help solve this serious problem and stand ready to volunteer their time toward this end.

Our ongoing discussions with PIC business leadership makes clear the overwhelming support for the precept that private/public partnership should underlie all policy efforts for labor market adjustment assistance to dislocated workers. Policies must encourage the coordination of resources at the federal, state, and local level among business, government, labor, education, and community organizations.

To foster improved coordination of resources, the partnership arrangements under the Job Training Partnership Act system should serve as the foundation for the continued development of cohesive employment and training policies at the state and local levels. Competing or duplicative delivery systems, or separate categorical programs that take no account of what already exists, would waste scarce public resources and should be avoided. Dislocated worker policies should build on existing approaches that have worked.

In short, local partnership authorities (local elected officials and private industry councils who are responsible for planning and coordinating job training services in their localities) should have a role in the substate design and delivery of dislocated worker programs in their areas.

Furthermore, in our judgment, dislocated worker legislation should specify a local service delivery system component to assist workers who are permanently dislocated from jobs in local communities but who are not served by plant-specific programs related to large plant closings or mass layoffs. (About 50% of those permanently dislocated

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will require such assistance.)

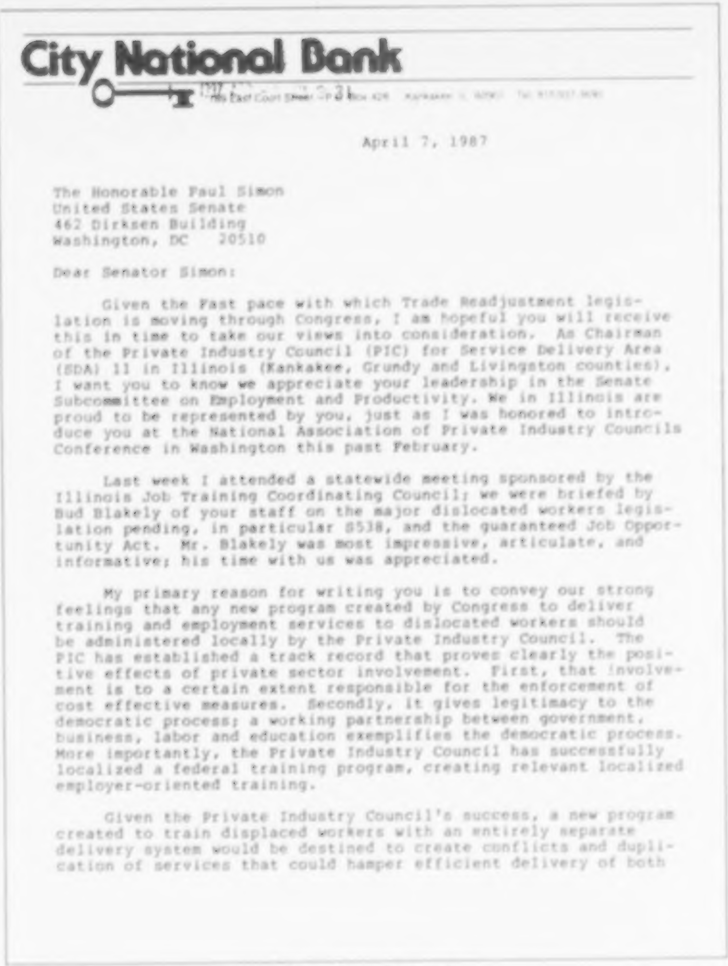
Finally, we suggest that Congress not establish a new and separate tri-partite, state-level advisory council for purposes of this program alone. Such an action would run counter to federal and state attempts to consolidate numerous separate and duplicate advisory councils required elsewhere in federal legislation. Federal policy should utilize the existing State Job Training Coordinating Councils (modifying them if necessary to meet changing mandates) which are legally required to advise the governor on coordination of all related programs and services for labor market policies in the state.

We appreciate your consideration of these recommendations. We would be pleased to provide any additional information you might require as you consider new legislation.

Sincerely,

Jack Klepinger
Chairman
Board of Directors

Robert Knight
President



City National Bank

April 7, 1987

The Honorable Paul Simon
United States Senate
462 Dirksen Building
Washington, DC 20510

Dear Senator Simon:

Given the fast pace with which Trade Readjustment legislation is moving through Congress, I am hopeful you will receive this in time to take our views into consideration. As Chairman of the Private Industry Council (PIC) for Service Delivery Area (SDA) 11 in Illinois (Kankakee, Grundy and Livingston counties), I want you to know we appreciate your leadership in the Senate Subcommittee on Employment and Productivity. We in Illinois are proud to be represented by you, just as I was honored to introduce you at the National Association of Private Industry Councils Conference in Washington this past February.

Last week I attended a statewide meeting sponsored by the Illinois Job Training Coordinating Council; we were briefed by Bud Blakely of your staff on the major dislocated workers legislation pending, in particular S538, and the guaranteed Job Opportunity Act. Mr. Blakely was most impressive, articulate, and informative; his time with us was appreciated.

My primary reason for writing you is to convey our strong feelings that any new program created by Congress to deliver training and employment services to dislocated workers should be administered locally by the Private Industry Council. The PIC has established a track record that proves clearly the positive effects of private sector involvement. First, that involvement is to a certain extent responsible for the enforcement of cost effective measures. Secondly, it gives legitimacy to the democratic process; a working partnership between government, business, labor and education exemplifies the democratic process. More importantly, the Private Industry Council has successfully localized a federal training program, creating relevant localized employer-oriented training.

Given the Private Industry Council's success, a new program created to train displaced workers with an entirely separate delivery system would be destined to create conflicts and duplication of services that could hamper efficient delivery of both programs. In the same vein, I would advise against a dual system of statewide delivery of in-plant services and local delivery of out-of-plant services, as Bill S538 proposes. Again, a dual system is almost guaranteed to create conflict and duplication at the local level. In fact, the current JTPA Dislocated Workers Centers in Illinois have been delivering in-plant pre-layoff assistance using local staff; that system has been able to respond quickly and effectively with maximum coordination for follow-up training services.

Finally, it seems to me the most compelling reason to use the existing PIC system is the time and effort saved; a new program can be implemented and delivered quickly. The first several years of JTPA have given the PIC the experience at evaluating local entities with the potential for delivering services. They have "tested the waters" and eliminated the ineffective service providers. No new entity could do better at determining local delivery of services.

As you know, Illinois has a strong community college system, and in SDA #11, the PIC utilizes Kankakee Community College as the administrative entity and grant recipient for all JTPA titles. This has been an effective strategy for the PIC, as SDA #11 in the fiscal year ending June 30, 1986, delivered the program for the lowest cost per participant in the State of Illinois while exceeding the performance standards established for it by the Department of Labor. However, you should be aware that the current Dislocated Workers Program (JTPA Title III) is being delivered by the community colleges throughout the State (including Kankakee Community College), and they will most likely speak out with a strong voice in favor of retaining control of whatever new program Congress enacts. Because the colleges do have an outstanding track record, I feel confident that in most parts of the state, the PIC's would be likely to subcontract with them.

Again, I realize all of this legislation is being moved through quickly, and as I write this letter, a compromise bill may have already been created. If, however, there is any opportunity for our views to be included as testimony or documentation for Private Industry Council involvement, I would appreciate that opportunity. If there is any other way that our local council or staff can be helpful to you, please feel free to call on us.

Sincerely,

Paul F. Blanke, Chairman
Grundy, Livingston, Kankakee
Private Industry Council (SDA #11)

PFB:bls

The City of New York

WASHINGTON OFFICE

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202-393-3903

Jay Michaud
Legislative Representative

April 6, 1987

MEMORANDUM

TO: Bud Blakey, Counsel
Subcommittee on Employment
and Productivity

FM: Jay Michaud
Legislative Representative

RE: New York City Comments on S.538, Economic Dislocation
and Worker Adjustment Assistance Act

For your information, I have attached a copy of the New York City comments on S.538. We respectfully request that our statement be submitted as part of the official hearing record for the bill. In addition, I have attached a summary of New York City recommendations on Title I and Title III of the legislation, for your own convenience.

New York City is interested in working with you, and Senator Metzenbaum's staff, on this important piece of legislation. We have already met with Al Cacozza to discuss our concerns and we will gladly meet with you if you have further questions.

If I may be of assistance, please call.

JM:vh

Attachments

Economic Dislocation and Workers Adjustment Assistance Act (S.538)

Committee on Labor and Human Resources, Subcommittee on Labor

April 3, 1987

Testimony of

Alair A. Townsend, Deputy Mayor for Finance
and Economic Development

City of New York

On behalf of the City of New York, I would like to thank Subcommittee Chairman Metzenbaum and his distinguished colleagues for the opportunity to testify on the proposed Economic Dislocation and Worker Adjustment Assistance Act, introduced as S.538. New York City supports the overall concept and goals of S.538 which commits $980 million in federal funds for FY '88 for training and assistance programs to aid dislocated workers and their families, mitigate the impact of plant closings and layoffs, and stabilize local economies. We strongly agree with the proposal's stated finding that "it is in the national interest to foster, through private and public means, the reemployment of workers permanently displaced from employment".

The City has a number of specific recommendations on several provisions contained in S.538, outlined below. Before turning to detailed comments and suggestions, I would like to reiterate our overall support for the commitment of additional resources for dislocated worker assistance. At the same time, we urge federal lawmakers to view this proposed new program as a necessary and important complement to, rather than a substitute for, existing federal programs, such as the Job Training Partnership Act (JTPA) and the Trade Adjustment Assistance Program (TAA), designed to aid the nation's unemployed and assist communities suffering the effects of structural changes in the local or national economy. The Trade Adjustment Assistance Program, which aids workers and companies hurt by import competition, should be reauthorized by Congress independent of S.538.

Title I - Dislocated Workers' Adjustment Services

The service delivery system established under JTPA has proven effective in providing economically disadvantaged and dislocated workers with the skills necessary to meet the employment needs of business. The JTPA system, with its linkages to economic development and commerce and industry, and through its local service delivery areas (SDA), has proven to be a successful mechanism to directly address the specific needs of businesses in response to local economic conditions. In 1986, for example, New York City, working in conjunction with the private sector, developed successful employer- and industry-specific programs to train and place 1,200 dislocated workers in a variety of growth industries including retail trade, printing, electronics, health care and finance. These efforts were financed with JTPA Title III resources. Yet the number of dislocated workers served represents only 1.3 percent of the estimated 90,000 dislocated worker in the City. This underscores the need for additional services to assist those not currently served.

Based on our experience with the existing JTPA Title III dislocated worker program in New York City, we believe that S.538 would be enhanced if several provisions affecting funding and administration were modified.

Funding

The bill allocates seventy percent of available funding to states with approved service plans, reserving thirty percent for use by the Secretary of Labor for discretionary and exemplary programs. Under Title III of JTPA, funds are currently allotted directly to states and distributed through a competitive Request for Proposal (RFP) process to local Service Delivery Areas. As a result, funds are often not channeled to the City and other SDAs throughout the nation in a timely manner, thus inhibiting the ability of localities to quickly respond to the needs of employers and dislocated workers.

To ensure that under the program proposed in S.538, New York City and other SDAs will receive the funding necessary to assist dislocated workers at the local level in timely fashion, we recommend that an intra-state formula be added to the legislation, using the same unemployment factors as the proposed federal formula. In addition, to prevent the accrual of unspent worker adjustment assistance monies at the state level, we recommend that the amount of allowable carryover funds be limited to fifteen percent and that a provision be established for reallotting unspent funds to areas within states, based on their need and ability to use the funds.

Administration

As currently proposed, S.538 would give states considerable discretion with regard to program administration. For instance, states would determine how to provide rapid response to assist workers facing layoffs and permanent job loss, who will deliver services and what local delivery system, if any, is to be established. Moreover, while utilizing the JTPA administrative structure, the bill does not specify a role for JTPA SDA's. Yet these SDAs are essential to the successful delivery of employment and training services at the local level. Effective service delivery systems currently in place should be retained.

The City supports the creation of a Dislocated Worker Unit at the state level to coordinate state resources for displaced workers, expand and improve rapid delivery of labor market services to firms and employers affected by layoffs and plant closings throughout the State, and provide preventive technical assistance to employers to avert plant closings and layoffs. However, the ability of the State Unit to quickly respond to the needs of specific firms and dislocated workers will be affected by the extent and nature of local dislocation and the size of the labor market area. We suggest therefore that SDAs with a population of 500,000 or more be authorized to develop and implement a rapid response service delivery system, as appropriate, to address local needs. The SDAs, in conjunction with local public economic development agencies, would be responsible for providing readjustment and retraining services to affected employers and laid-off workers. Administrative monies should be alloted to SDAs which perform these functions.

To encourage local participation in the administration of programs, we suggest that S.538 be modified to include local SDAs among the groups and entities represented on the proposed tripartite advisory committees and worker adjustment committees. We are pleased that the bill offers a broad definition of "dislocated workers" eligible for program benefits. It includes service and production workers, individuals who have lost their self-employment as a result of overall economic conditions, and displaced homemakers trying to enter the labor force because they have lost their spousal support. This flexible definition correctly recognizes the ongoing transformation of the nation's work force.

We also support the use of funds to provide a range of labor market services to affected workers. To ensure that the bulk of worker adjustment funds are used for skills retraining purposes, we recommend that, where available, other sources of funding be utilized before using funds allocated under this proposed Act, to provide such services as basic education and literacy, and other support services. The bill acknowledges that labor market services and local retraining programs should target areas of demand. This requires extensive labor market research beyond information currently available under Title IV, Part B of the Job Training Partnership Act. S.538 should more specifically address the issue of available resources to facilitate labor market research at the local level.

Title II - Advance Notification and Consultation

This title requires employers to give advance notification of plant closings and mass layoffs to affected employees and state and local governments, with a minimum notification period of three months for layoffs involving over 50 employees and a maximum advance notice of six months in the most severe cases. Noncompliant firms are subject to severe financial penalties. New York City supports the underlying rationale that early warning is necessary in order to effectively deploy dislocation and adjustment services before dislocation actually occurs. However, we have serious questions about the feasibility and effectiveness of the particular method proposed here to achieve this goal. A more flexible, incentive-based early warning system such as currently being established in New York State through the "New York Compact" may be a preferable alternative, meeting the same needs while avoiding potential problems associated with mandatory advance notice.

An incentive-based notification mechanism, which offers participating firms substantial financial incentives in exchange for contractual obligations on the part of such firms to give advance notice with regard to shutdowns or layoffs, represents a flexible yet potentially effective approach to providing early warning of shutdowns and layoffs. Such a system could generate considerable benefits to affected localities. For instance, under the New York Compact, once implemented, participating companies will have access to a variety of state-provided financial and technical assistance which could lessen or reverse the planned layoff or plant closing. At the same time, when and if a plant closing or layoff occurs, affected employees would receive special economic adjustment and job training assistance, along with extended health benefits. Yet mandatory notification requirements such as proposed in S.538, while addressing the same objectives, may actually intensify the difficulties of struggling firms and hasten the demise of companies at risk - thereby accelerating economic dislocation rather than preventing it.

Smaller firms in particular may be unable or reluctant to give substantial advance notice of planned layoffs. While many New

York City firms are small enough (i.e., under 50 employees) to be automatically exempt from the notification mandate, many other New York firms, while still relatively small, would fall under this mandate. The long-term stability of these firms, and their capability to survive business slumps, often depend on access to capital and insurance, and on the loyalty of their best employees, their customers, and suppliers. If layoffs become a necessity, or even a possibility, these firms may be harmed by mandatory plant layoff notices because the very support network which maintains them may be eroded or destroyed in the wake of layoff publicity. Financial institutions may shun such firms while customers, suppliers and even employees (including those who may not be affected by a firm contraction) may turn to competitors for business and jobs. This could make a potential plant contraction or shutdown a reality, speed up this chain of events and magnify the damage. Worker productivity may drop as a result of this publicity, along with a firm's overall performance. In the case of larger, publicly held firms contemplating contraction or layoffs, shareholders may also suffer as company stock plunges due to premature shutdown announcements.

In recognition of these potential problems, S.538 contains a clause enabling employers to commit employees or their representatives to confidentiality with regard to sensitive information likely to compromise a troubled firm while aiding its competitors. Violators of this confidentiality provision could be held liable for any financial damage resulting to the firm. While this clause appears to address the concerns raised above, we question its effectiveness in preventing negative publicity or remedying any damage. It is unclear, for instance, how regulations governing employee confidentiality could be enforced, how the leaking of firm-specific information could be traced to a particular individual, and how any subsequent damage could be assessed. Moreover, it appears unlikely that legal action to recover damages, could they in fact be enforced against a specific employee, would be successful given that recovery hinges on the ability of an employee threatened by permanent job loss and financial insecurity to pay for any such damage. Admittedly, incentive-based early warning systems such as the New York Compact pose similar issues. Yet they enable those firms most sensitive to the effects of leaked information (mostly smaller firms) to choose between substantial benefits attached to notification commitments and the no commitment/no assistance alternative, leaving it up to a firm to best assess its situation.

Another issue of particular concern to New York City is the severe financial penalty - potentially thousands of dollars a day - a firm violating the early notification requirement would face. While Title II of S.538 may have been designed primarily to cover large firms in industries with predictable performance patterns (the kinds of firms typically found in locations other than New York City), many New York City firms could suffer significant hardship under this provision. For instance, the performance of many of our firms, which tend to be smaller than firms nationwide, depends on seasonally determined market trends, making such firms ill-equipped to predict layoffs several months in advance. This is particularly true for apparel related firms (New York City's largest single source of manufacturing employment) since an apparel firm's performance often depends on customer purchase orders which tend to be negotiated or cancelled at a fairly short notice. Apparel firms may therefore be forced to lay off employees on a shorter notice than required under S.538, yet they also tend to quickly rehire workers from the same labor pool as seasonal upswings increase business volume.

Other New York City industries characterized by seasonality are moving and storage, tourist, and food related industries. Imposing harsh financial penalties on companies not complying (or not able to comply) with early warning requirements could impair many traditional New York City businesses which may otherwise adjust, recover and survive. While S.538 contains an escape clause exempting firms from the full early warning mandate in the case of "unforeseeable business circumstances", we are concerned that this vague language may not address the situations described above since seasonality, although possibly preventing firms from accurately predicting layoffs, is a recurring cycle, and therefore not entirely "unforeseeable". Secondly, this clause appears to still subject "exempted" firms to advance notification while only shortening the notification period. This may not provide adequate relief.

Title II of S. 538 as currently proposed does not clearly address all scenarios associated with plant closings or layoffs. It is not clear, for instance, whether all instances of relocation of facilities and jobs from one jurisdiction to another would constitute a "plant closing" or "mass layoff" for the purposes of this legislation, although the bill language seems to imply that all relocations involving more than 50 employees are covered. Relocations of a firm's facilities or operations within the New York City metropolitan area, are not uncommon, with the relocated facilities often drawing on the same labor pool although possibly crossing jurisdictional, even state lines. A clearer definition regarding this issue would seem appropriate.

Secondly, the proposed civil penalty clause covering noncompliant firms does not address bankruptcy situations where financial penalties imposed under this Act could conflict with outstanding creditors' claims. It is unclear which claims would have priority. Also, in extreme cases, the threat of financial penalties under Title II of this legislation, combined with other financial liabilities, could even prompt firms to consider bankruptcy to avoid payment.

Lastly, New York City is concerned that local governments could be unduly burdened under the early warning provision as firms start filing layoff notices in order to comply with Title II even if a layoff action may be only a remote possibility. This could force localities to expend scarce resources to prepare for rapid, firm-specific intervention without sufficient knowledge to assess the probability of a planned layoff, or the ability to distinguish between "real" and merely "preventive" layoff warnings filed to avoid any potential noncompliance.

Title III - Demonstration Models and Discretionary Programs

Under Title III, S.538 proposes several new demonstration models in select communities to aid dislocated workers and help them return to full-time employment. For the purposes of this provision, it is important that JTPA SDA's be included among the entities and organizations authorized to conduct such demonstration programs. The proposed models, to be tested in a limited number of states, would be funded through discretionary allocations set aside for this purpose from the overall funding allocation for the Dislocation and Worker Adjustment Assistance Act as currently proposed. The Secretary of Labor, who would determine the allocation of discretionary funds subject to specified limits, would also have considerable discretion in choosing the states or localities suitable for a demonstration model.

While S.538 provides for discretionary funds for such models to be targeted to communitites "having the largest number of dislocated workers", this provision leaves room for considerable flexibility, given the fact that a "dislocated worker" population may be hard to identify. This may be particularly true in New

York City where the characteristics of economic dislocation are significantly different, and harder to categorize, than in traditional "blue collar" communities where one company or industry is the primary source of jobs. For the purposes of Title III, it is particularly important to correctly identify "dislocated workers", using the broad definition provided under Title I.

A. Dislocated Workers Training Loan Demonstration Program

This demonstration model would provide loans to eligible dislocated workers for vocational and on-the-job training, basic education, relocation expenses, and child care services. The City agrees with these important funding priorities. However, we believe that the most appropriate way to increase training and job opportunities for dislocated workers is to direct monies to existing programs providing such services rather than offer loans to recipients to purchase services directly. Therefore, we recommend that this loan model be converted into a grant mechanism allocating additional resources to in-place programs providing the above services. In addition, repayment of dept with interest, as low as it may be, is an unnecessary financial burden for workers who have recently lost their jobs and who can avail themselves of other training programs at no cost.

B. Self Employment Opportunity Demonstration Program

We support this model which, similar to innovative entrepreneurial programs in England and France, would enable recipients of unemployment insurance to use their benefits as seed capital to help start their own business ventures. This is an idea worth testing. According to the proposed legislation, target states to test this model would be selected based on their ability to provide the additional financial and technical support necessary to help a new business get started. New York State provides a range of traditional and innovative business assistance and training programs (including incubator programs) which could support such efforts. New York City has a diversified labor pool including many dislocated workers who may have the know-how and the entrepreneurial spirit to test this approach. In the City's graphic arts industry, for example, rapid technological changes are posing new opportunities for skilled workers to capitalize and start new, competitive and innovative enterprises. Further, the City has numerous community development corporations which have the expertise to assist such fledgling businesses further.

C. Public Works Employment Demonstration Program

The City generally supports the concept of public works employment as a transition to private sector employment for long-term unemployed and public assistance recipients in areas of high unemployment. However, we believe that for the purposes of S.538, public funds would be better spent on programs to train or retrain dislocated workers for private sector jobs, rather than for public sector employment which provides limited job training opportunities. Under the proposed model, we recommend that the allocation formula eliminate or reduce the unemployment rate factor and more accurately reflect the population targeted for these services by including such factors as the relative number of individuals who have been unemployed for fifteen weeks or more in each locality as compared to the total number of such individuals in all localities, and the relative number of adults receiving AFDC benefits in each locality. In addition, to ensure that areas of high unemployment within New York City are eligible for funding through this section, we recommend that each of the five counties within New York City be considered as separate units. Moreover, funds should be allotted directly to grant recipients as defined under JTPA which are not in all cases the Private Industry Councils as specified in the bill.

Sufficient funding should be made available under this section to enable SDAs to adequately assess participants and to provide them with basic skills training, educational remediation, and other support services. We also recommend that the administration of the program including selection of job projects should rest with the SDAs. In addition, the establishment of job clubs should be left to the discretion of the SDAs which have the expertise and demonstrated ability to determine the most appropriate services to assist unemployed individuals in preparing for employment. To clarify the definition of functions, responsibilities and participants, the definitional section of S.538 should specifically describe the terms "Service Delivery Areas", "Administrative Entities" and "Grant Recipients", as established under Title I of the Job Training Partnership Act. Lastly, SDAs should be included among the entities and organizations eligible to participate in the exemplary and demonstration programs under the Secretary's Discretionary Fund.

In conclusion, I would like to support the finding stated in S.538 "that fully meeting the needs of displaced workers and impacted communities can only be accomplished within the framework of an economy providing an adequate number of jobs". It is precisely this point which argues most strongly for the need to retain business assistance and jobs development programs currently in place at the federal level.

Thank you.

Title I - Dislocated Workers' Adjustment Services

With its linkages to economic development and the private sector, through its local Service Delivery Areas (SDA) and Private Industry Councils (PIC), the JTPA system has proven effective in providing economically disadvantaged and dislocated workers with the skills necessary to meet the employment needs of business. The JTPA system is well-established to effectively address the needs of local businesses, in response to local economic conditions.

For example, utilizing JTPA Title III resources in 1986, New York City, through its Department of Employment, in conjunction with the private sector, has developed successful employer-and industry-specific programs to train and place 1,200 dislocated workers in a variety of growth industries including retail trade, printing, electronics, health care and finance. The number of dislocated workers served represents only 1.3 percent of the estimated 90,000 dislocated workers in the City, thus pointing to the need for additional services to assist those not currently served.

Based on our experience with the existing JTPA Title III dislocated worker program in New York City, we believe that S. 538 would be enhanced if several provisions affecting funding and administration were modified.

Funding

The bill allocates 70 percent of available funding to states with approved service plans, based on the current JTPA Title III formula. Thirty percent of the funding would be reserved for use by the Secretary of Labor for discretionary and exemplary programs. Of the 70 percent allotted to states, 25 percent would be allotted on the basis of the number of workers displaced by plant closings or mass layoffs.

Title III monies are currently allotted directly to the states, and distributed by the states through a competitive Request for Proposal (RFP) process to local Service

Delivery Areas. As a result, funds are often not channeled to the City and other SDAs throughout the nation in a timely manner, inhibiting the ability of localities to respond quickly to the needs of employers and dislocated workers.

To ensure that New York City and other SDAs receive the funding necessary to provide adjustment and retraining services to dislocated workers at the local level in a timely fashion, we recommend that an intra-state formula be added to the legislation, using the same unemployment factors as the proposed federal formula.

In addition, to prevent the accrual of unspent worker adjustment assistance monies at the state level, we recommend that the amount of allowable carryover funds be limited to 15 percent and that a provision for realloting unspent funds to areas within states, based on their need and ability to use the funds, be established.

Administration

The bill authorizes state governors to determine: how the state will provide rapid response to assist workers affected by layoff or permanent job loss, who will deliver services and what, if any, local delivery system is to be established. Moreover, while utilizing the JTPA administrative structure, the bill does not specify a role for JTPA SDAs, which are essential to the successful delivery of employment and training services at the local level.

The City supports the creation of a Dislocated Worker Unit at the state level to coordinate state resources for displaced workers, expand and improve rapid response delivery of labor market services to firms and employers affected by layoffs and plant closings throughout the state, and provide preventive technical assistance to employers to avert plant closings and layoffs. However, the ability of the state unit to respond quickly to the needs of specific firms and dislocated workers throughout a state will be affected by the extent and nature of local dislocation and the size of the labor market area.

We suggest therefore, that SDAs with a population of 500,000 or more be authorized to develop and implement a rapid response service delivery system, as appropriate, to address local needs. The SDAs, in conjunction with local public economic development agencies, would be responsible for providing readjustment and retraining services to affected employers and laid-off workers. Administrative monies should be allotted to localities which perform these functions.

To encourage local participation in the administration of programs, the City suggests that the bill be modified to include local SDAs and PICs among the groups and entities represented on the tripartite advisory committees and proposed worker adjustment committees.

The bill offers a broad definition of "dislocated workers" eligible for program benefits including white collar employees, service and production workers, individuals who have lost their self-employment as a result of overall economic conditions, and displaced homemakers trying to enter the labor force because they have lost their spousal support. We welcome this flexible definition.

The City also supports the use of funds to provide a range of labor market services to affected workers. To ensure that the bulk of worker adjustment funds are used for skills retraining purposes, we recommend that other sources of funding, where available, be utilized before using funds allocated under this Act, to provide such services as basic education and literacy, and other support services.

Title III. - Demonstration Models and Discretionary Programs

In addition, the legislation should include JTPA SDAs and PICs, among the entities and organizations eligible to conduct demonstration programs.

A. Dislocated Workers Training Loan Demonstration Program
This demonstration model would provide financial loans to eligible dislocated workers for vocational and on-the-job training, basic education, relocation expenses, and child care services. The City agrees with these important funding priorities. However, we believe that the most appropriate way to increase training and job opportunities for dislocated workers is to direct monies to existing programs rather than provide loans to recipients to purchase services directly. Therefore, we recommend that the loan program be converted into a grant program.

In addition, payment of the loan with interest, as low as it may be, is an unnecessary financial burden for those individuals recently laid off from their jobs and who can avail themselves of other training programs at no cost. It could also have the effect of excluding that segment of the eligible population most in need of services.

B. Self Employment Opportunity Demonstration Program
No additional comment.

C. Public Works Employment Demonstration Program
While the City is supportive of the concept of public works employment as a transition to private sector employment for long term unemployed and public assistance recipients in areas of high unemployment, we believe that funds would be better spent on programs to train or retrain dislocated workers for private sector jobs rather than public sector employment, which provides limited job training. Under the proposed model, we recommend that the allocation formula eliminate or reduce the unemployment rate factor and,

more accurately reflect the population targeted for such services by including such factors as the relative number of individuals who have been unemployed for 15 weeks or more in each locality, as compared to the total number of such individuals in all localities, and the relative number of adults receiving AFDC in each locality. In addition, to ensure that areas of high unemployment within New York City are eligible for funding through this section, we recommend that each of the five counties within New York City be considered as separate units. Moreover, funds should be allotted to grant recipients as defined under the Job Training Partnership Act, which are not in all cases, the Private Industry Councils, as specified in the bill. Further, sufficient funding should be made available under this section to enable SDAs to adequately assess participants and to provide them with basic skills training, educational remediation, and other support services.

We also recommend that administration of the program including selection of job projects should rest with the SDAs. In addition, the establishment of job clubs and the provision of other services should be left to the discretion of the SDAs, which have the expertise and demonstrated ability to determine the most appropriate services to assist unemployed individuals in preparing for employment.

The definitional section of the bill should also include a definition for the terms Service Delivery Areas, administrative entities and grant recipients, as established under Title I of the Job Training Partnership Act.

Finally, SDAs and PICs should be included among the entities and organizations eligible to participate in the exemplary and demonstration programs under the Secretary's Discretionary Fund.

Senator **Simon**. The hearing stands adjourned.

[Whereupon, at 11:52 a.m., the joint hearing was adjourned.]

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